

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                             |
|-----------------------|---|-----------------------------|
| THE STATE OF IDAHO,   | ) | Supreme Court No. _____     |
|                       | ) |                             |
| Plaintiff-Respondent, | ) |                             |
|                       | ) |                             |
| vs                    | ) | COURT REPORTER'S TRANSCRIPT |
|                       | ) |                             |
| THOMAS EUGENE CREECH, | ) |                             |
|                       | ) |                             |
| Defendant-Appellant.  | ) |                             |

BEFORE  
HONORABLE J. RAY DURTSCHI  
DISTRICT JUDGE

APPEAL from the District Court of the First  
Judicial District of the State of Idaho, in and for the  
County of Shoshone.

A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff,

VS

THOMAS EUGENE CREECH,

Defendant.

Cr. No. 2165

REPORTER'S TRANSCRIPT

BEFORE

HONORABLE J. RAY DURTSCHL

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and  
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,  
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,  
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,  
appearing for and on behalf of the defendant.

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE  
3  
4

5 THE STATE OF IDAHO,

6 Plaintiff-Respondent,

7 vs

8 THOMAS EUGENE CREECH,

9 Defendant-Appellant.  
10  
11  
12  
13  
14

) Cr. No. 2165  
)  
)

) LODGMENT OF COURT  
) REPORTER'S TRANSCRIPT  
) ON APPEAL  
)  
)  
)

15 RECEIVED from John W. Gambee, Official Court Reporter  
16 of the above-entitled court, and lodged with me this \_\_\_\_ day  
17 of \_\_\_\_\_, 1976, original plus \_\_\_\_ copies of  
18 the Court Reporter's Transcript on Appeal.  
19  
20  
21

22 CLERK OF THE DISTRICT COURT  
23  
24

25 \_\_\_\_\_  
Deputy

1 CASCADE, IDAHO, WEDNESDAY, MAY 21, 1975, 9:30 A.M.

2  
3  
4 THE COURT: I will just announce before we start, if there  
5 are any prospective jurors present, all the jurors should be over  
6 in the American Legion Hall.

7 Counsel ready to proceed?

8 MR. REMAKLUS: The State is ready, Your Honor.

9 MR. HOWER: Defense is ready, Your Honor.

10 THE COURT: I'll direct the Clerk to draw another name,  
11 then.

12 THE CLERK: Louise Bears.

13 MR. REMAKLUS: Your Honor, may I inquire? My notes  
14 disclose here that we're still on juror number four; is that  
15 correct?

16 THE COURT: Hazel Yoken was the last, or number four,  
17 and she was excused for cause.

18 MR. REMAKLUS: Thank you.  
19  
20  
21  
22  
23  
24  
25

1 LOUISE K. BEARS,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mrs. Bears, the selection of the jury has been kind  
8 of divided into two parts and the first part about which you will  
9 be questioned will have reference only to pretrial publicity.  
10 By this I'm referring to newspaper accounts, radio and television  
11 broadcasts and the like.

12 At the outset our questions will be pretty much  
13 confined to your experience with such items. Now, have you  
14 followed this case in the papers?

15 A Not too thoroughly, no.

16 Q And it is not your practice to check the papers every  
17 day?

18 A No.

19 Q And do I understand you to mean that you haven't  
20 made any particular point of following the Creech case?

21 A No, I haven't.

22 Q Of course, Mr. Hower and I know that you are  
23 Postmistress at McCall, or Postmaster for many, many years. Do  
24 you -- are you in the habit of watching television in the  
25 evenings, Mrs. Bears?

1 A. Not very much news. I don't get home in time.

2 Q. So, really, do you feel that you have not been  
3 exposed to pretrial publicity to any extent?

4 A. Not a lot. I have seen some right at first, but not  
5 for a long time, but very little.

6 Q. I know you have a busy office up there, I'm wondering  
7 if you've had any particular occasion to talk about this or hear  
8 this matter discussed there --

9 A. No.

10 Q. -- in the course of your work?

11 A. No, I haven't.

12 Q. You feel, then, Mrs. Bears, that you have an open  
13 mind at this point?

14 A. I believe I do.

15 Q. Now, I see where you've been called, but you've  
16 never served as a juror.

17 A. That's right.

18 Q. Now, if you are, you know, finally seated as a trial  
19 juror in this matter, the Court will give you the instructions  
20 as to what the law is, and of course, you will be bound to  
21 follow those instructions. I'm sure you won't have any  
22 difficulties in that?

23 A. No.

24 Q. Now, I'm sure one of the instructions are going to  
25 be that your opinion would have to be based only on the evidence

1 that you would see and hear right here in the courtroom.

2 A. Yes.

3 Q I'm -- you could follow that; could you not,  
4 Mrs. Bears?

5 A. I believe so.

6 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. HOWER:

10 Q Mrs. Bears, you mentioned that you had read something  
11 about this case a long time ago.

12 Let me ask you specifically if you read stories,  
13 news stories, about this case published in the Idaho Daily  
14 Statesman at any time in the last five days?

15 A. No -- I'm sorry, I did too. There was an article,  
16 something about the trial, where the trial was going to be set  
17 up or something just the other day. I really didn't read this  
18 thing very thoroughly; it was being in Cascade and was coming up.

19 Q That story that had to do with information about  
20 the trial date and so on?

21 A. Yes.

22 Q Did you read all of that news?

23 A. Yes.

24 Q Did you read all of that news story?

25 A. That one across the top of the page, yes.

1 Q Mrs. Bears, in your work you meet the public?  
2 A Yes.  
3 Q The whole public of McCall?  
4 A Well, quite a few.  
5 Q Do you have any impression at this stage as to  
6 whether or not most of the public in McCall has pretty strong  
7 opinions about the probable guilt or innocence of Mr. Creech?  
8 A No, I don't because I have not talked to them. I  
9 mean, this is not a practice in our office to visit about even  
10 outside things. I mean, occasionally people come in and tell  
11 you something that happens, but, other than that, why, we  
12 normally are not a visiting office, we don't have time.  
13 Q Do you subscribe, Mrs. Bears, to the Idaho Daily  
14 Statesman?  
15 A Yes.  
16 Q How much time, roughly on the average, do you spend  
17 each day reading the Statesman?  
18 A Not very much, maybe I'll read it once a week if  
19 I'm lucky and, then, I don't read everything.  
20 Q Just sort of skim it for the headlines?  
21 A Or the inside obituaries is what I normally look at.  
22 Q Is it your statement, Mrs. Bears, that only one of  
23 the stories published in the last five days in the Statesman;  
24 that only one of those you have read?  
25 A Yes.



1 here awhile back on this one -- where was it? California and  
2 they went down somewheres in the desert; that he was being  
3 taken down there to help clear up some matter or something.

4 Q What was your understanding as to why he was taken  
5 down there?

6 A Be honest with you, I didn't read it all. I did  
7 read part of it and he was being taken down there to -- something  
8 in regards to some other type of missing person or something  
9 down there. But, other than that, I honestly don't know but I  
10 did read about him having to land on the highway; which was  
11 quite an accomplishment, I think, for the pilot. But --

12 Q Do you feel that you are, at present, Mrs. Bears,  
13 free from all prejudice for or against this defendant?

14 A I believe I am free from them.

15 Q You have no inclination to feel that either guilt  
16 or innocence until you've heard the evidence?

17 A Um-hmm.

18 MR. HOWER: Pass the juror for cause, Your Honor.

19 THE COURT: Are the jurors that have been passed for  
20 cause, are they downstairs?

21 VOICE: Yes, they're in the jury room.

22 THE COURT: Do Counsel see any reason why all the jurors  
23 can't stay in the American Legion Hall; even though they've  
24 been passed for cause? I don't really see any -- if they follow  
25 these instructions given not to discuss, I think they are more

1 Q Have you heard anyone, at any time, express an  
2 opinion as to the probable guilt or innocence of Mr. Creech?

3 A Yes, I have.

4 Q Many times or only rarely?

5 A Occasionally, not -- I mean, just rarely when it  
6 happens to come up or something come up about it.

7 Q In expressing these opinions, has anyone ever given  
8 a basis for that opinion?

9 A No, not to my knowledge.

10 Q So, you've heard people say they think -- you've  
11 heard people express an opinion as to his guilt or innocence,  
12 but you've never heard anybody give a basis for such an  
13 opinion?

14 A No.

15 Q The opinions, or opinions you've heard expressed,  
16 Mrs. Bears, were they opinions that Mr. Creech was probably  
17 guilty or that he was probably innocent?

18 A Most of them guilty.

19 Q Have you heard anybody express an opinion as to what  
20 they think ought to be done with Mr. Creech; that is, as to  
21 whether he should be hanged or not, or tried or not, or things  
22 like that?

23 A Yes, I have.

24 Q How many times have you heard such opinions expressed?

25 A Oh, just a minimum of five or six times, maybe, over

1 comfortable down there than they are downstairs.

2 MR. REMAKLUS: I have no objection. I think they have been  
3 adequately admonished not to discuss their questioning here in  
4 the courtroom while they've been in by themselves and I have no  
5 objection.

6 MR. HOWER: I have no objection, Your Honor.

7 THE COURT: Why don't you tell the jurors that are  
8 downstairs that they can go to the American Legion Hall.

9 MR. HOWER: We've both passed for cause, but we haven't  
10 inquired --

11 THE COURT: Right, go ahead.

12 MR. REMAKLUS: Yes, Your Honor. Thank you.

13

14 FURTHER VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16 Q Now that we're past the pretrial publicity stage, I  
17 have a few general questions and I'm sure Mr. Hower will have  
18 some also.

19 Mrs. Bears, how do you feel about the death penalty?

20 A I don't believe that there should be.

21 Q You do not believe --

22 A In capital punishment, no.

23 Q Mrs. Bears, if you are selected as a trial juror and  
24 the State meets the burden of proof that will be announced to you  
25 by the Judge, can you arrive at a verdict based upon the evidence;

1 without regard to what the punishment might be?

2 A. I believe so.

3 Q. You understand, don't you, Mrs. Bears, that the  
4 punishment is not up to you or me, that's the function of the  
5 Court.

6 A. That's right.

7 Q. And that if -- and this is all we're interested in is  
8 people who can keep an open mind and arrive at a decision in  
9 this matter based solely on the evidence here in this room.

10 A. That's right.

11 Q. Have you made arrangements, Mrs. Bears, to be away  
12 from your work as long as this matter takes?

13 A. Well, I have a clerk in charge who will take my  
14 place and, if she has problems, she can contact our head office  
15 in Boise and --

16 Q. Fine. So, actually, your office will be able to  
17 function? All I'm concerned about is that you will be able to  
18 devote your time and attention to the trial and not worry about  
19 the office.

20 A. I believe so.

21 Q. Fine. I see where Mr. Bears is now working for the  
22 City of McCall. How long has he worked there?

23 A. A year ago this month.

24 Q. And he's had a long-time career in forestry and  
25 sawmill work, has he not?

1 A. Yes.

2 Q Mrs. Bears, would the fact that all of the State's  
3 witnesses may not be what you might call pillars of the  
4 community, would this bother you in determining the value of  
5 their testimony?

6 A Will you clear up what "pillars of a community" is?

7 Q Well, you know in all witnesses to crimes are not  
8 equivalent to the neighbor next door or the people, maybe, that  
9 come from McCall Post Office. They may come from different  
10 walks of life.

11 A. Okay.

12 Q And my question is, will you give their testimony  
13 your undivided attention and evaluate it?

14 A. Yes.

15 Q Evaluate their truths and veracity based on the  
16 Judge's instructions?

17 A. Yes.

18 Q Fine. Thank you. Do you have a strong moral or  
19 religious conviction about the death penalty, Mrs. Bears?

20 A. Not a strong one, I just don't believe in it, really.

21 Q You don't think this would trouble you with  
22 reference to arriving at a decision in this case?

23 A. No, I don't.

24 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.  
25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. HOWER:

3 Q Mrs. Bears, I'm interested in your certain views a  
4 little further; your feelings about the death penalty.

5 You mentioned that you do not have a strong  
6 religious feeling about it. Could you state in your own words  
7 the key reason, or reasons, why your -- you have reservations  
8 about the death penalty?

9 A. Because I believe everyone has a right to live and  
10 they was put in this world for life and that's why they should  
11 be -- maybe it's religious, until God comes and takes us for his  
12 own. I'm not a religious-type person, in one sense I'm  
13 religious, but not to the point of being very strong about it.

14 But, I believe everybody has a right to live;  
15 although I do believe in our laws, I mean, our laws are set up  
16 in our state are such that that's the outcome of these things,  
17 why, it's not my responsibility, I mean, other than the fact to  
18 proven guilt, somebody proves the fact and proven somebody -- the  
19 way I look at it, whether they are guilty or not guilty.

20 But, I do believe that everybody should have a right  
21 to live. I don't believe in taking anybody's life, to be honest  
22 with you.

23 Q I think I understand.

24 You mentioned, Mrs. Bears, that you don't think of  
25 yourself as a powerfully, strongly religious person.

1 A. No.

2 Q. I don't say this to intimidate you at all, but I  
3 need to inquire. You are aware that you are under oath?

4 A. Yes.

5 Q. That you and all the other jurors were sworn?

6 A. Yes.

7 Q. Do you feel, Mrs. Bears, that when you take the  
8 solemn oath, if you should violate it, do you feel that there is  
9 any divine sanction or punishment for violation of that oath; or  
10 the only sanction or punishment is that imposed by civil  
11 authority?

12 A. Maybe I'm religious. I believe in divine.

13 Q. You think there is?

14 A. I think that there is, otherwise have punished  
15 people for false indignation as well as our courts. Maybe I'd  
16 better clarify my idea of religion.

17 Being strongly religious is going to church and  
18 doing all these things physically. I do believe in God and --

19 Q. That's what I'm concerned about, Mrs. Bears, as to  
20 whether the oath, to put it bluntly, has a religious hold on  
21 you; whether you fear the punishment of God, if you take an  
22 oath and violate it deliberately and intentionally.

23 A. Well, yes.

24 Q. Bearing that in mind, Mrs. Bears, do you approach  
25 the duty of sitting on the jury which will judge the guilt or

1 innocence of Thomas Creech with an attitude of open mindedness  
2 and fairness towards him?

3 A. Yes.

4 Q. Without having prejudged the question?

5 A. Yes.

6 MR. HOWER: I pass this juror for cause, Your Honor.

7 THE COURT: All right, you may go back over to the  
8 American Legion Hall. I'll ask you, do not discuss any of the  
9 questioning here that took place with the other jurors or  
10 discuss any of the questions. Thank you.

11 State's second pre-emptory.

12 THE CLERK: Shirley Brandenburg.

13

14 SHIRLEY BRANDENBURG,

15 a prospective juror herein, having been first duly sworn, took  
16 the stand and testified as follows:

17

18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q. Mrs. Brandenburg, the questions that we're going to  
21 ask you here at the beginning of the process of the jury  
22 selection are going to be confined to pretrial publicity; by this  
23 I'm referring to newspaper articles, television broadcasts,  
24 conversations that you may have participated in or overheard and  
25 so on.



1           Now, keeping this in mind, the first part of the  
2     questioning is going to be limited to this and please don't be  
3     afraid to answer the questions fully and honestly. If you need  
4     explanation of a question, why, don't be -- don't hesitate to  
5     express yourself.

6           A.     All right.

7           Q.     Have you followed the Creech case in the daily  
8     papers?

9           A.     Yes, I have.

10          Q.     Have you made it any particular point of following  
11     it?

12          A.     Yes, I think so because it happened close.

13          Q.     And have -- how recently have you read the papers?

14          A.     About Sunday -- oh, before that, you mean?

15          Q.     Well, you read Sunday's papers?

16          A.     I did.

17          Q.     Um-hmm. And did you read all of the article in it?

18          A.     I don't think so, just the headline and --

19          Q.     Has this -- let me ask you this: Have you followed  
20     this, tended to follow it more closely since you have been  
21     summoned as a juror?

22          A.     No, I've read, probably, every article before.

23          Q.     Okay. Now, what about you folks? Watch television?

24          A.     Not since I've been told not to.

25          Q.     Well, I understand that, yes. But, I mean before

1 the Judge's admonition, before the Judge told you not to.

2 A. Oh, yes.

3 Q You've seen -- have you seen news broadcasts of this  
4 case?

5 A. If they were on, I probably did.

6 Q Have you participated in conversations about this  
7 matter; other than, say, at home?

8 A. Right after it happened, probably a few people.

9 Q Now, the fact that you have read about this in the  
10 papers and, perhaps, have discussed it early when it first  
11 became publicized, have these caused you to have any opinions  
12 one way or the other as to the guilt or innocence of this  
13 defendant?

14 A. I think so.

15 Q You think that these opinions are such that it would  
16 take evidence produced here in the courtroom to change them?

17 A. I don't think they would be changed.

18 Q You have a fixed opinion at this time?

19 A. I'm pretty sure.

20 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

21

22

23

24

25

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mrs. Brandenburg, how long ago did you receive the summons that you were called for jury duty in this case?

A I believe it was last Wednesday night.

Q Last Wednesday night?

A Yes.

Q Since that time have you had any conversations with anybody --

A Well --

Q -- let me finish the question. I know you've had some conversations.

Have you had any conversations with anybody about what you can say or not say or how you should act in order to be chosen for the jury or excused for jury duty?

A I don't know. I mean, other than that was this case that's coming up and I can't remember.

Q Have you talked with anybody since you received the summons about what kind of questions you would be asked on this examination?

A No, I didn't know what kind of questions, no.

Q Have you heard any talk among the jurors and I --

A No.

Q -- I haven't asked the question.

A We're not supposed to talk about it.

1 Q You are not supposed to talk about the case and we  
2 all assume that you are not talking about the case.

3 A Yeah.

4 Q Have you heard any talk among the jurors on how to  
5 get on the jury or stay off the jury?

6 A No.

7 Q None whatever?

8 A No.

9 MR. HOWER: Your Honor, I challenge the juror for  
10 cause.

11 THE COURT: Just for the record here to pursue the  
12 questions that Mr. Hower was just asking you, I would expect  
13 that no jurors would want to sit on this particular case or  
14 look forward to it, really.

15 But, to explore this for the record, can you tell me  
16 any specific facts that stand out in your mind that you heard  
17 about the case that have caused you to form the opinions you  
18 say you have?

19 THE WITNESS: Well, I have read everything about it in  
20 the newspaper ever since it happened and --

21 THE COURT: Are there any specific facts that you read in  
22 the newspapers that stand out in your mind?

23 THE WITNESS: Do you want me to --

24 THE COURT: Yes, I want you to tell me what you've read  
25 and remember about it that caused you to have this opinion.

1 THE WITNESS: Because of the bodies that were found -- I  
2 forget the states, couple of states.

3 THE COURT: About other states you say?

4 THE WITNESS: Yes, there were, and --

5 THE COURT: Those are the kinds of facts I'm interested in,  
6 what you remember in your mind.

7 THE WITNESS: Yes.

8 THE COURT: That stands out in your mind. Anything else?

9 THE WITNESS: And they were looking for more and because  
10 of what was, you know, said and --

11 MR. HOWER: Before the Court rules on the challenge,  
12 could I have permission to follow up with a question or two?

13 THE COURT: Yes.

14 MR. HOWER: Thank you.

15

16 FURTHER VOIR DIRE EXAMINATION

17 BY MR. HOWER:

18 Q Mrs. Brandenburg, you've stated that you have read  
19 everything available about this case?

20 A Yes.

21 Q Have you also discussed it with your husband?

22 A Before I knew that I was going to be called?

23 Q Yes.

24 A Yes, I have.

25 Q All of the questions I'm about to ask refer,

1 Mrs. Brandenburg, to the time before you received your summons  
2 to serve on the jury.

3 A. Yes.

4 Q Did you discuss the case extensively with friends  
5 and acquaintances here in Valley County at that time?

6 A. Extensively? We talked about it after it happened.

7 Q Yes.

8 A. Yes.

9 Q Would you say you heard a good bit of talk about it?

10 A. I have.

11 Q Yes. Have you heard friends or acquaintances  
12 express opinions as to the probable guilt or innocence of  
13 Mr. Creech?

14 A. Oh, some have and some haven't.

15 Q Some have and some have not?

16 A. Yeah.

17 Q Are you able to quantify that? Are you able to  
18 say that many of your friends and acquaintances have expressed  
19 an opinion or that only a few have or what?

20 A. Probably just a few. I don't think I've talked that  
21 -- I just read it and, you know, I followed it because it did  
22 happen here. If it happened in another state, I don't think,  
23 you know, I would be -- would have read about it.

24 Q Have you and your friends discussed the newspaper  
25 stories about crimes attributed to Mr. Creech in other states?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. Don't think so. Can't remember.

MR. HOWER: Okay. Thank you, Mrs. Brandenburg.

THE COURT: I'm going to grant the challenge. We don't want you to feel, Mrs. Brandenburg, that you are shirking your duties by telling us these things or because you read them in the papers; that's natural and we're not criticizing you for doing that. In fact, we appreciate your frankness and honesty about it.

We'll excuse you now. We have to have another jury here on June the 5th at 10:00 for another trial.

So, you'll be excused at this time. Until then, if you'll remember that date.

THE WITNESS: I'll have to come back June 5th?

THE COURT: Yes, on June 5th at 10:00 unless the Clerk gets in touch with you at another time.

Thank you for your appearance this morning.

THE CLERK: Mary Lou Droge.

1 MARY LOU DROGE,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:

4  
5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mrs. Droge, in our selection, or questioning of  
8 prospective jurors, it's been divided into two parts and the  
9 first part of our questioning is going to be with reference to  
10 pretrial publicity and in this regard I'm referring to  
11 newspaper articles, television, radio broadcasts, conversations  
12 and things of that nature.

13 Now, keeping that in mind, I'd like to ask you if  
14 you have followed this case in the papers?

15 A Yes, I have.

16 Q And have you heard or watched the television  
17 broadcasts about it?

18 A Yes, but I did not last night.

19 Q I understand that. I'm talking about before the  
20 Judge admonished everybody to be careful about that.

21 Did you make it any particular point to follow this  
22 case in the papers?

23 A Just a matter of interest in any case like that.

24 Q The fact that it happened in this county; did that  
25 cause you to take more interest in it than if it would have



1 happened someplace else?

2 A Yes, if it probably happened someplace else, I  
3 wouldn't have read so much about it.

4 Q If -- in view of this, do you have any opinion one  
5 way or the other with reference to guilt or innocence in this  
6 particular case?

7 A Well, the things that I've seen on TV and read, I  
8 feel a little bit biased. The information seems to be more  
9 heavily weighted in one direction than the other.

10 Q Have you ever talked to anybody that purported to  
11 know the facts of the case?

12 A No.

13 Q And any opinion one way or the other that you  
14 might have at this time, then, would just be based on  
15 newspaper articles or television?

16 A Yes. Then, I've just discussed it with my husband.

17 Q And put it -- I guess, to put it plainly, you don't  
18 believe everything you read in the newspapers, do you?

19 A Right.

20 Q Thank you. You understand, of course, that  
21 newspaper articles are not necessarily based upon investigations  
22 that could be -- that they are --

23 A Um-hmm.

24 Q -- I'm sure you know what I'm talking about,  
25 Mrs. Droge.

1 A. Yes.

2 Q. You think you are in a frame of mind now that would  
3 prevent you from being fair and impartial in this case if you are  
4 finally selected as a juror?

5 A. Well, I would hope that I could be fair in judging  
6 the facts. I will say it's going to be hard to get some of  
7 these ideas out of my head, though.

8 Q. If you are selected here, I notice that you've never  
9 served on a jury before.

10 A. Right.

11 Q. Now, if you are chosen as a trial juror the Judge  
12 will instruct you as to what the law is in this case and you  
13 must follow the law whether you might disagree with it or not.  
14 That is the law.

15 Would you have any difficulty in that, Mrs. Droge?

16 A. Well, I'd try to follow the law but, you know, I --

17 Q. This is a complex thing we're talking about and we  
18 all know that. But, you would be instructed by the Judge as  
19 to what the law is and, then, in your deliberations as a juror,  
20 of course, your duty as a juror would be to determine the facts  
21 and that is the fact of guilty or not guilty.

22 A. Yeah, I realize that.

23 Q. And the law is going to be stated to you by the  
24 Judge and you are bound by that.

25 A. Um-hmm.

1 Q I'm sure you understand that, don't you?

2 A Yes.

3 Q Now, keeping in mind the questions I've asked you,  
4 do you think, if you are selected here as a juror, that you  
5 could base your decision in this case on the evidence that you  
6 would get here in the courtroom?

7 A I've been wrestling with that question in my own  
8 mind. Like I say, the facts that are not the facts, the  
9 information that's been doled out seems -- well, it seems like  
10 he's already been judged as far as the reports are concerned  
11 and I really think it would be difficult for me to obscure all  
12 this from my mind. But, I would do my very best to give a  
13 just, a real unbiased opinion if I, you know, I would do my  
14 best.

15 MR. REMAKLUS: I have no further questions, Your Honor.

16

17 VOIR DIRE EXAMINATION

18 BY MR. HOWER:

19 Q Mrs. Droge, you are, I'm sure, aware of the  
20 principle in the Anglo-Saxon legal system that a person is  
21 presumed innocent until he's proved guilty?

22 A Yes.

23 Q As you sit there, Mrs. Droge, are you able to  
24 presume this defendant to be innocent?

25 A Not right now.

1 Q Not right now?

2 A No.

3 Q Let me inject another ingredient, Mrs. Droge, into

4 your thinking --

5 A Okay.

6 Q -- to see if it changes it.

7 Are you aware, or have you thought about the fact

8 that in every determination of guilt or innocence it is

9 necessary to consider, not only what happened, not only the

10 events, but why it happened; the motives?

11 Do you feel that you have information in your

12 possession which has led you to the conclusions as to the motives

13 for the events you believe to have happened?

14 A Yes.

15 Q You feel you know why it was done?

16 A Well, this is purely rumor and I don't recall reading

17 it or seeing it on TV. But, it was brought to my attention that,

18 possibly, it had been through the use of drugs.

19 Q What?

20 A Through the use of drugs that had instigated this

21 act.

22 Q Have you arrived on the basis of the information you

23 have -- have you arrived at a conclusion on that point,

24 Mrs. Droge?

25 A Only that I feel that this sounds very possible to

1 me because I feel drugs cause people to do things that they  
2 would not normally do under normal circumstances. I feel that  
3 this could very possibly have been.

4 Q If you were selected as a juror in this case and  
5 took the oath which states that they will well and fairly try  
6 the case on the basis of evidence and the law --

7 A Um-hmm.

8 Q -- as stated by the Court. Are you prepared to  
9 make a conscientious effort to do that?

10 A I would be very conscientious about trying to look  
11 at all the information given me and in a fair manner. I would  
12 want somebody to do this for me if I were in that position and --

13 Q I think that's all we can ask.

14 I pass this juror for cause, Your Honor.

15 THE COURT: Mrs. Droge, let me just, for my own  
16 information, ask you to tell me what ideas you have in your  
17 mind that you would have to get out to -- in other words, at  
18 one point you made a statement it would be hard for you to get  
19 the ideas out of your head that you have.

20 I would like for you to just spell out for me,  
21 come right out and tell me the details that you've read or heard  
22 that really are in your mind now and fixed in your mind that  
23 cause you to have this opinion that you have formed.

24 THE WITNESS: Well, it's hard for me to believe that  
25 someone that has been -- whose name has been connected with so

1 many incidents other than the one that we're dealing with here,  
2 that there must be something.

3 THE COURT: That's the thing that stands out in your  
4 mind?

5 THE WITNESS: Yes, you know, the fact I could -- I would  
6 find it much easier, I think, to deal with this more  
7 conscientiously and fairly if, in the back of my mind I didn't  
8 know that this person was connected with other of the various  
9 same type of acts.

10 THE COURT: You are talking about in other states?

11 THE WITNESS: Yes, in other states and it seems, you  
12 know, one incident, maybe there's a good excuse but others,  
13 I think, oh boy, you know, I feel sorry.

14 THE COURT: Okay, appreciate that and we appreciate your  
15 frankness here, Mrs. Droge.

16 If you will not discuss with the other jurors at  
17 all what questions we asked here or what was said we'd appreciate  
18 it. You may go back to the American Legion Hall at this time.

19 MR. HOWER: Now, I understand the Court is excusing this  
20 juror?

21 THE COURT: No, if you are not going to challenge her.

22 MR. HOWER: No challenge has been made.

23 MR. REMAKLUS: No challenge has been made, but we're not  
24 concluded with our voir dire examination.

25 THE COURT: I'm sorry, go ahead.

1 THE WITNESS: So I stay?

2 THE COURT: I forgot, have to go through some other  
3 matters we want to ask you first.

4

5 FURTHER VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Now that we've sort of gone over the pretrial  
8 publicity aspect, we do have some other questions.

9 Now, do you think that the intentional use of drugs  
10 by an individual would excuse the commission of a crime?

11 A No.

12 Q Do you have -- you and Dr. Droge have been at  
13 McCall for five years, I see?

14 A Yes.

15 Q The attorney-client relationship between you and  
16 Dr. Droge and my office has been concluded; hasn't it?

17 A Yes.

18 Q How do you feel about the death penalty, Mrs. Droge?

19 A I hate to see it used and, yet, if it happens to be  
20 true that this fellow has been involved in these many crimes,  
21 I feel that there really is no place in society for him and,  
22 then, I think the death penalty has its place.

23 Q Mrs. Droge, if you are selected, you know, as a  
24 trial juror to listen to the evidence in this case, the  
25 evidence in this case is going to be concerned with the Idaho

1 events.

2 A. Um-hmm, I realize that.

3 Q And, now, if the State meets the burden of proof  
4 that will be charged by the Judge, based only on the Idaho  
5 events, will you be in a frame of mind to fairly judge guilt or  
6 innocence of this defendant based only on the Idaho events?

7 A Yes, I would like to see him have a fair trial on  
8 these other events also.

9 Q Now, would the fact that Dr. Droge is a dedicated  
10 physician and dedicated to prolonging of human life and relief  
11 of suffering; would that give you any trouble with reference to  
12 the death penalty?

13 A I've never -- no, I don't think there's been any  
14 connection there.

15 Q You understand that what the law is is established  
16 by the legislature and that's the way, that isn't your function  
17 as a juror; to determine the punishment.

18 A Um-hmm.

19 Q Mrs. Droge, having followed the papers, are you  
20 aware of the fact that the validity of the death penalty is  
21 now before the United States Supreme Court?

22 A Yes, but I really haven't followed it closely  
23 enough to know, really, particulars on it.

24 Q But you do know that it's undecided as to whether  
25 it would be carried out?



1 A. Yes.

2 Q. If you are selected here as a juror, have you made  
3 any arrangements for the children to be cared for?

4 A. That's a problem, it really is. I can make  
5 arrangements easily enough for daytime care for the children  
6 and, if it were on into the evening for a short period of time.  
7 But, they would have to be a 24-hour-type of service they'd be  
8 under because of the fact that Eddy goes in and out during the  
9 night constantly and he would not be able to watch them at  
10 night. So, at this time I really don't know who I could leave  
11 them with for an extended period of time for 24 hours a day  
12 because there would be one day a week when they'd be able to be  
13 under his care and --

14 Q. This would present a real problem, then; would it  
15 not?

16 A. Yes. Like I say, daytime and this is what I had  
17 in mind when I filled out that questionnaire, I can make  
18 arrangements during daytime. But, yesterday it was brought to  
19 my attention and that was the first I had really realized that  
20 this could happen; that in the case like this then be away from  
21 the children, or away from home for two, three or more days.

22 So, I really -- I've been thinking hard about it as  
23 to what I would do and I think it's -- it would be very  
24 difficult with his hours being so unpredictable. If they were  
25 set hours when we were home and if he could watch them from

1     ten at night until seven in the morning, it would be helpful.  
2     But, I'm not sure what I would do.

3             Q     Dr. Droge customarily receives night calls; does he  
4     not?

5             A     Yes, he's in and out. Some nights no, but other  
6     nights two or three times. So, he can't call somebody to come  
7     over quick at two in the morning.

8             Q     And I see the children are age two and four years;  
9     that is correct, isn't it?

10            A     Yes.

11            Q     Mrs. Droge, I know that you are well aware of the  
12     fact that being on a jury is one of the obligations and duties  
13     of citizenship.

14            A     Yes.

15            Q     And I'm wondering this: That because of the  
16     difficulty in having the children properly cared for, if this  
17     would create a hardship for you in giving the trial your  
18     undivided attention.

19            A     I think I'd be rather concerned about any girls,  
20     very bluntly I'll say it, that I would have them in the back of  
21     my mind wondering how they were doing if it lasted for longer  
22     than, you know, three days or so.

23                     I'd be pretty up tight about it because I just don't  
24     leave my children that much and to think that they were not even  
25     being able to see me for that length of time, I'd be a little

1 concerned about it.

2 MR. REMAKLUS: I'm sure you would.

3 THE WITNESS: I understand it is a citizen's obligation  
4 and a duty and I appreciate this in our system of law and I'll  
5 admit I was -- I had mixed emotions when I received this  
6 notification that I would be called on jury duty. At that time  
7 I didn't know this case was coming up or any other case and I  
8 looked on it as a learning experience for myself and I'm so dumb,  
9 I guess I didn't realize that it could be overnight-type of  
10 thing and, so, the girls, I didn't -- hadn't given me any  
11 concern. I hadn't thought about it until yesterday.

12 Q BY MR. REMAKLUS: Well, this is an unusual situation  
13 so please don't consider that you've caused any oversights for  
14 yourself.

15 A Well --

16 Q Because this is, you know, a --

17 A I really feel dumb about courtroom procedures and  
18 the whole thing.

19 Q Mrs. Droge, where did you go to school; receive  
20 your education? I see you were a teacher.

21 A Jamestown, North Dakota; which is a Presbyterian  
22 affiliated college.

23 Q And when were you graduated from there?

24 A '61.

25 Q 1961?

1 A. Um-hmm.

2 Q. And did you teach for a few years before you and  
3 Dr. Droge were married?

4 A. No, we were married after I graduated and I began  
5 teaching that very year.

6 Q. How long did you teach?

7 A. Either six and a half or seven and a half years.

8 Q. What grades did you customarily teach?

9 A. Mostly junior high and, then, I had some experience  
10 in elementary.

11 Q. And where did Dr. Droge go to school?

12 A. His undergraduate work was done at Jamestown College  
13 and Medical School at -- first two years University of North  
14 Dakota and last two years University of Oregon.

15 Q. And where did he put in his residency prior to  
16 coming to McCall?

17 A. Santa Rosa, California.

18 Q. So, you and Dr. Droge came from the same place in  
19 North Dakota?

20 A. No, he's a Montanan and I'm a Minnesotan.

21 Q. You met at school, is that right?

22 A. Right.

23 MR. REMAKLUS: I'm going to pass the juror for cause,  
24 Your Honor.

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FURTHER VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mrs. Droge, I don't want to insult you by suggesting that any past relationship between you or your husband -- any relationship between you and your husband and Mr. Remaklus would influence your judgment on a murder case, but I do need to know how long it has been since that relationship existed and what the general nature of it was.

A Well --

Q If this is not confidential or private or anything like that.

A We have two little girls who are adopted and he was our attorney.

Q He was your attorney in connection with the adoption?

A Yes.

Q How long ago was that work finished?

A Well, we just made our final payment last month and Lisa was adopted in the courtroom a year ago April.

Q Okay. It's not pending, the work is finished?

A No, the work is complete.

Q I don't care whether it's paid for or not, just so the matter is not anything that could possibly be on your mind --

A No.

Q -- in connection with this trial.

1           A.     No.

2           MR. HOWER: I pass this juror for cause, Your Honor.

3           THE COURT: Let me ask you this, Mrs. Droge, in  
4 reference to your children.

5                     Is it feasible at all, do you feel at this point,  
6 that your husband or you -- you would have some time, I mean,  
7 could make 24-hour arrangements if it was just necessary?

8           THE WITNESS: Oh, I'd do my best to find one. But, right  
9 now, I just can't guarantee that I could find somebody and  
10 there's no way that I can rely on my husband to watch them, you  
11 know, for any period of time.

12          THE COURT: I understand, I'm thinking of getting  
13 somebody else.

14          THE WITNESS: And there just aren't that many people in  
15 McCall that do that sort of thing and --

16          THE COURT: I see.

17          THE WITNESS: -- it's hard enough to find somebody if  
18 you are going to go down to Boise overnight or something. So,  
19 if this is an extended type of thing, which I understand that it  
20 very well could be, I find it very hard in my heart to have to  
21 burden my friends with passing the girls around until the thing  
22 is all over.

23          THE COURT: Do you think your friends might sort of  
24 share it as a civic duty?

25          THE WITNESS: I think they would if, you know, it really

1 came down to that and right now I hate to even ask them because  
2 Christy is sick, but -- and the lady who is a possibility I  
3 know is already obligated for this coming weekend to other  
4 people and I would hate to have her take care of my sick daughter  
5 along with these other well children she's obligated for.

6 THE COURT: Okay. Thank you. We'll ask you, as I said  
7 before prematurely, don't discuss the questioning here or  
8 anything with the other jurors. We'll ask you, then, to go back  
9 to the American Legion Hall.

10 THE WITNESS: Okay.

11 MR. REMAKLUS: Are you ready for the defendant's next  
12 pre-emptory?

13 THE COURT: Yes.

14 THE CLERK: Robert Williamson.

15  
16 ROBERT O. WILLIAMSON,  
17 a prospective juror herein, having been first duly sworn, took  
18 the stand and testified as follows:

19  
20 VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q Mr. Williamson, the process of jury selection in  
23 this case has kind of been divided into two parts and the first  
24 part of the questioning that we will engage in has to do with  
25 pretrial publicity; that is, newspaper articles, radio and

1 television broadcasts, conversations that you may have  
2 overheard or engaged in; things of this nature.

3 Now, keeping this aspect in mind we're going to try  
4 to, you know, within reason, confine our questions to this  
5 part of it.

6 Now, have you followed the Creech case in the  
7 papers?

8 A. Yes.

9 Q. Have you followed it on television?

10 A. Yes.

11 Q. Now, with reference to following it in the papers,  
12 would you explain what you mean by that? Give us an idea of --

13 A. I read the articles in the Statesman and in our  
14 local paper.

15 Q. And how long have you followed it in the Statesman?

16 A. Since it was started.

17 Q. You -- do you have any recollection of the  
18 specific articles or anything like that?

19 A. You want me to quote as much as I can remember of  
20 it? Is this what you are getting at?

21 Q. Well, I don't want to quote as much, Mr. Williamson,  
22 is whether or not that you formed any opinion as a result of  
23 your exposure to this publicity.

24 A. I've digested the material that was in the paper.  
25 Now, I can't tell you if that information was true or not if



1 that's what you mean.

2 Q In other words, you're well aware of the fact that  
3 there is some newspaper reporter's version of what may have  
4 happened?

5 A Yes.

6 Q And you know that this isn't necessarily based on  
7 fact or on results of investigations; this is newspaper  
8 reporting only.

9 A I assume there's two bodies found down here in  
10 Donnelly.

11 Q Yes, certainly. I suppose you are like the rest of  
12 us and watch the television occasionally; do you not?

13 A Yes, I do.

14 Q Have you seen the news broadcasts of this matter?

15 A Yes.

16 Q Now, in your work, of course, I know that you are  
17 a building contractor and have been for a number of years in  
18 McCall. You get around quite a little bit. Have you been  
19 exposed to conversations around the community of -- about this  
20 matter?

21 A I suppose so. I don't recall any lengthy details  
22 of conversations about this, but --

23 Q Now, bearing in mind that you have been exposed to  
24 this somewhat, if you are finally selected as a trial juror in  
25 this case, could you give the State and the defendant a fair

1 and impartial decision based only on the evidence that would  
2 be produced here in the courtroom?

3 A. I think so.

4 MR. REMAKLUS: I'll pass the juror for cause.

5 THE WITNESS: Beg your pardon?

6 MR. REMAKLUS: Mr. Hower will now ask some questions.

7 THE COURT: Just a little term we use.  
8

9 VOIR DIRE EXAMINATION

10 BY MR. HOWER:

11 Q Mr. Williamson, in your every day experience, most  
12 of what you read in the newspaper is, in fact, true; is it not?

13 A Be a question with the Statesman. I don't agree  
14 with a lot of their --

15 Q When you read in the Statesman that somebody was  
16 born in St. Al's Hospital yesterday or the day before, you take  
17 that as fact; do you not?

18 A Yes.

19 Q If you read in the Statesman that the score of a  
20 basketball game against the Bullets and Warriors last night was  
21 91 to 92 --

22 A They're reasonably accurate in that.

23 Q Did you read in the Statesman that Mr. Creech has  
24 been charged with murder in other states?

25 A I'm not sure I remembered it as being charged, but

1 as being investigated.

2 Q You don't remember reading that he is charged with  
3 a -- two specific murders in the State of Oregon?

4 A No, I don't remember them being charged.

5 Q Do you remember reading in the Statesman,  
6 Mr. Williamson, that Mr. Creech was involved in a forced  
7 aircraft landing enroute back from California a few weeks ago?

8 A No.

9 Q You didn't read that?

10 A No.

11 Q Do you remember hearing about it from anybody?

12 A No.

13 Q Do you now have, Mr. Williamson, an opinion as to  
14 the probability or lack of it that Mr. Creech has been  
15 involved in serious offenses in other states?

16 A I think he probably has.

17 Q Accepting that as your present belief on that  
18 subject, does that affect your present impression as to whether  
19 or not he is probably guilty of the offenses charged with --  
20 that he's charged with here?

21 A I wouldn't say he's guilty until he's proven  
22 guilty.

23 Q I understand that and I would expect that,  
24 Mr. Williamson. But, I'm asking you whether the information  
25 you have which you have said leads you to consider it probable

1 that he's involved in serious crimes in other states, does this  
2 lead you to consider it probable than you would otherwise?

3 A. Yes.

4 Q. You understand, Mr. Williamson, that in the English  
5 and American legal system every person is entitled to a  
6 presumption of innocence.

7 A. Yes.

8 Q. He is presumed innocent until he is proved guilty.

9 A. That's right.

10 Q. And by "proved guilty" we mean by admissible  
11 evidence presented in a court of law; not by what one reads in  
12 the newspaper.

13 A. That's true.

14 Q. You understand that?

15 Now, are you now in a frame of mind, Mr. Williamson,  
16 with respect to Mr. Creech so that you can honestly give him the  
17 full benefit of that presumption if you sit on this jury?

18 A. I think I'm prejudiced. I think I would consider  
19 the things that I've read in the paper. I probably would always  
20 have a doubt in my mind that he would probably be guilty.

21 MR. HOWER: I appreciate your candor, Mr. Williamson.

22 I challenge this juror for cause, Your Honor.

23 THE COURT: You take exception to the challenge,  
24 Mr. Remaklus?

25 MR. REMAKLUS: I have another question or two I'd like to

1 ask, if I may.

2 THE COURT: Go ahead.

3

4 FURTHER VOIR DIRE EXAMINATION

5 BY MR. REMAKLUS:

6 Q Mr. Williamson, if you were accepted as a juror and  
7 if you are instructed by the Judge, and I notice here you have  
8 not been a juror before; have you ever been a juror?

9 A No, I have not been a juror before.

10 Q I couldn't remember either.

11 If the Judge is going to instruct you as to what  
12 the law is and you must follow the Judge's instructions as to  
13 what the law is as applies to this case.

14 A Yeah.

15 Q Now, I'm sure you can follow those instructions and  
16 will listen carefully.

17 Now, if the Judge instructs you, Mr. Williamson,  
18 that your decision in this case must be based solely and only  
19 upon the evidence produced here in the courtroom, could you  
20 follow that instruction?

21 A I think I could follow those instructions, yes.

22 MR. REMAKLUS: I would resist the challenge, Your Honor.

23 THE COURT: Let me just ask you a couple of questions,  
24 Mr. Williamson.

25 You were asked -- I think Mr. Remaklus when he was

1 asking particular questions when he wanted to know what you  
2 read in the paper what you remember about it. I'd like you to  
3 tell me what you remember reading that has caused you to have  
4 the feeling you've expressed to Mr. --

5 THE WITNESS: I can't repeat for verbatim, but the gist  
6 I got out of the papers was that these two people were found in  
7 a ditch by Donnelly and he'd -- also they suspected Creech and  
8 an accomplice that he did, also, perhaps, kill someone in  
9 Oregon and I formed an opinion at that time if he probably,  
10 very likely, had done this too, if he was tried with it. But,  
11 if they could prove that he was up here and --

12 THE COURT: I'd just like to go through all the facts.  
13 Any other facts that you remember reading that stand out in  
14 your mind now as having caused you to have these opinions?

15 All I'm trying to ask is your memory of what you  
16 read.

17 THE WITNESS: There was other things in the paper about  
18 locating bodies someplace else in Arizona -- Nevada or someplace.

19 THE COURT: These are the things that stand out in your  
20 mind as having caused you to have these feelings?

21 THE WITNESS: Right.

22 THE COURT: You told Mr. Remaklus you felt you could  
23 follow that one instruction in deciding the case to the  
24 defendant. You also, as I interpret what you said when  
25 Mr. Hower -- you'd have a problem giving the defendant a

1 presumption of innocence because of what you read.

2 THE WITNESS: Well, with what -- I have an opinion  
3 already from what I've read.

4 THE COURT: What I'm going to ask you, would it take some  
5 evidence to remove those opinions to indicate that he was  
6 really innocent?

7 THE WITNESS: I think it probably would.

8 THE COURT: What I'm trying to get --

9 THE WITNESS: To be perfectly honest --

10 THE COURT: Start out with a clean slate, or would he  
11 have to sort of prove he was innocent?

12 THE WITNESS: I think, to be absolutely frank, he'd  
13 have to prove he's innocent with me and I can see where that's  
14 not proper.

15 THE COURT: We appreciate very much your candor,  
16 Mr. Williamson. I don't want you to feel this is what we wanted  
17 you to tell us, just how you felt about it and I don't want you  
18 to feel that you shirked your duties by doing this because you  
19 haven't.

20 But, we will excuse you because of this. We do  
21 have another trial scheduled on June the 5th at 10:00 if it's  
22 not settled. Otherwise we'll ask you to appear at that time.

23 THE WITNESS: Thank you.

24 THE CLERK: Thelma Jarvis.

25 THE COURT: Just a minute. I think we'll take a

1 ten-minute recess at this time.

2 We'll be in recess for ten minutes.

3 (Recess taken.)

4 THE COURT: Apparently the last name drawn hasn't been  
5 served so we'll have to draw another name.

6 MR. REMAKLUS: Your Honor, that was Thelma Jarvis that  
7 was not served?

8 THE COURT: Yes.

9 THE CLERK: Del Woodward.

10

11

DEL WOODWARD,

12

a prospective juror herein, having been first duly sworn, took  
13 the stand and testified as follows:

14

15

VOIR DIRE EXAMINATION

16

BY MR. REMAKLUS:

17

18

19

20

21

22

Q Mr. Woodward, in the jury selection in this case  
we've kind of divided it into two parts and the first part of  
it is going to be with reference only to what we call pretrial  
publicity and by this I'm referring to television broadcasts,  
conversations that you may have overheard or participated in  
and newspaper publicity and things of that nature.

23

Now, have you followed this case in the papers?

24

25

A Well, not too much. I have read it, but I haven't  
dwelled on it, no.



1 Q You made no particular note of it, then, as far as  
2 following it?

3 A Not any more than the rest of it.

4 Q Do you watch TV news in the evening?

5 A Not very often, sometimes.

6 Q Now, if you are selected here as a juror in this  
7 case, and I notice you've never been a juror before, have you,  
8 Mr. Woodward?

9 A No, sir.

10 Q Now, if you are selected the Judge is going to  
11 read the instructions and in the instructions it will give you  
12 the law of this case and you'll have to follow those instructions,  
13 Mr. Woodward.

14 A Right.

15 Q Now, I'm sure one of the instructions will be that  
16 you must base your decision on the facts that would be produced  
17 here in the courtroom.

18 A Yes, I understand.

19 Q Now, keeping that in mind, can you set aside what  
20 little that you may have heard before, or read, and render a  
21 fair and impartial verdict in this case; based on the evidence  
22 that you would hear right here in this courtroom?

23 A Yes, sir.

24 MR. REMAKLUS: I'll pass the juror for cause.  
25

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mr. Woodward, do you subscribe to the Idaho Daily Statesman?

A Yes, sir.

Q Did you happen to read the stories in the Statesman about this case --

A Well --

Q -- published on Sunday, Monday and Tuesday of this week?

A Well, I might have missed one or some of them. I've been pretty busy. I think I read some of it, yes.

Q Okay. As a result of reading those stories, Mr. Woodward, or any stories you read in the Statesman earlier or as a result of any conversations that you've had with people about this case, do you have any impression as of this minute as to whether or not the defendant is connected with serious crimes -- the commission of serious crimes in other states?

A Well, sometimes you can't believe all you read in the papers. But, I really don't know. I'd have to have -- I'd have to have more on it to decide, yes.

Q Then, as of this moment you don't have any distinct impression one way or the other on that point; is that correct?

1 A. I believe that's right.

2 Q. Mr. Woodward, have you ever in conversation with  
3 anybody about this case, have you ever expressed an opinion to  
4 anyone as to whether Mr. Creech is probably guilty or not?

5 A. No, I think every man's entitled to a fair trial.  
6 I don't think that is --

7 Q. Mr. Woodward, would you accept it as an ingredient  
8 of a fair trial that Mr. Creech should be tried in Idaho for  
9 whatever he may be charged in Idaho; that he should be tried  
10 in Oregon for whatever he may be charged with in Oregon or  
11 Nevada or California or wherever and that he should not be  
12 tried in this state for anything that he might have done  
13 someplace else?

14 A. I shouldn't think so.

15 Q. Would that seem to be fair to you?

16 A. Yes.

17 Q. Do you feel at this point, Mr. Woodward, that you  
18 have any feeling of prejudice, bias, hostility towards  
19 Mr. Creech?

20 A. No.

21 Q. You feel you do not?

22 A. I don't have any feelings against anyone like that.  
23 I'd have to know more about the case, yes, before I can decide.

24 Q. Are you aware, Mr. Woodward, that there is, in our  
25 legal system, a presumption of innocence of crimes? A person

1 is entitled to be presumed innocent until he is proved guilty?

2 A. That's right.

3 Q If you were to sit on this jury, could you begin  
4 your service on that jury with that presumption fully in  
5 effect as far as you are concerned?

6 A. Yes.

7 Q You would start to hear the evidence presuming this  
8 defendant innocent?

9 A. Yes.

10 MR. HOWER: Pass for cause, Your Honor.

11

12 FURTHER VOIR DIRE EXAMINATION

13 BY MR. REMAKLUS:

14 Q We're going to proceed now with other general  
15 questioning, Mr. Woodward.

16 I know, of course, that you worked up there at the  
17 mill for a long time. Are you still working, or are you  
18 retired yet, Mr. Woodward?

19 A. I'm still working.

20 Q Have you worked all winter? Would you be on shift  
21 today if you weren't down here?

22 A. Yes, sir.

23 Q If you are selected here as a trial juror, you  
24 don't have to worry about your job or anything, do you?

25 A. No, sir.

1 Q Fine. If you are selected here, then, you are  
2 going to give this defendant a fair -- the benefit of the  
3 presumption of innocence and you are going to give him a fair  
4 and impartial trial as far as you are concerned; are you not?

5 A Yes.

6 Q Have you ever given any consideration to the death  
7 penalty, Mr. Woodward?

8 A I think in some cases it may be necessary, yes.

9 Q Do you understand that it's not the function of the  
10 jury to fix punishment; that that's a matter that is taken care  
11 of by the law?

12 A Yes.

13 Q Fine. And that isn't our job here, yours or mine.

14 A Um-hmm.

15 MR. REMAKLUS: Pass the juror for cause, Your Honor.

16  
17 FURTHER VOIR DIRE EXAMINATION

18 BY MR. HOWER:

19 Q Mr. Woodward, are you professionally acquainted,  
20 or socially acquainted, with Mr. Remaklus, the Prosecuting  
21 Attorney?

22 A No, sir, I've known him, that's all.

23 Q Are you a religious man, Mr. Woodward?

24 A Yes.

25 Q Do you believe that when one takes an oath that

1       there is a sanction behind that oath beyond what the law might  
2       impose?

3               A.     Yes.

4               Q.     There is a religious sanction behind it; do you  
5       believe that?

6               A.     Well, I don't quite understand what you mean.

7               Q.     Okay. Do you believe if you take an oath and  
8       violate it that God will punish you for that?

9               A.     Yes, I think so, yes.

10              Q.     With that fact in mind, are you ready to state  
11       that you can approach the trial of Thomas Creech prepared to  
12       base your decision only on the evidence you hear in court and  
13       without yielding to any preconceptions or any prejudice that  
14       you may feel?

15              A.     I think that's fair, yes.

16              Q.     And you believe you can do that?

17              A.     Yes.

18              MR. HOWER: We accept this juror for cause, Your Honor.

19              THE COURT: We'll ask you, then, Mr. Woodward, to go  
20       back to the American Legion Hall and don't discuss with the  
21       other jurors what you've been asked here, or the questions.

22              THE WITNESS: Okay.

23              THE CLERK: Patricia Whitaker.

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PATRICIA L. WHITAKER,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Whitaker, in a jury selection in this matter  
the questions have been kind of designed in two parts and what  
we wish to discuss with you first is the matter of pretrial  
publicity and I'm referring to radio, television and newspaper  
accounts of this matter and as nearly as possible we're going  
to confine our questions and our discussion at this time to  
those things.

Have you followed this case in the papers?

A Yes, I have.

Q And have you followed it on television?

A Yes.

Q Have you made any particular point of following it  
in the papers?

A Pardon?

Q Have you made a particular point of following this  
in the papers? Have you looked for articles about this?

A Yes, because it was here in the County and it was  
news.

Q And is that -- and, of course, it happening here

1 has created some interest in it?

2 A. Yes.

3 Q. Now, I assume that you probably have seen it on  
4 television news as well?

5 A. Yes.

6 Q. Now, if you are selected here as a juror, can you  
7 put those things aside and base your decision on the evidence  
8 you would see produced here in the courtroom?

9 A. I would have to say no.

10 Q. In your present frame of mind, then, could you  
11 be fair and impartial as far as this defendant is concerned?

12 A. I would have to say that I do have an opinion, a  
13 preformed opinion.

14 Q. And what has caused this, Mrs. Whitaker?

15 A. It's my own personal opinion based on things that  
16 I've read and what I think.

17 Q. Now, without asking you what your opinion is, is  
18 it fixed at this point?

19 A. Yes.

20 MR. REMAKLUS: We'd ask that Mrs. Whitaker be excused.

21 MR. HOWER: No objection, Your Honor.

22 THE COURT: I'd just like to ask a -- ask you just to  
23 clarify the record for my purpose here, I appreciate probably  
24 no member of the jury panel wants to sit on this trial or is  
25 looking forward to it.



1 With this in mind, there is the possibility that  
2 occasionally we have a situation where a juror might say they  
3 have a fixed opinion just not to serve and for that reason I  
4 would like to have you relate to me, in some detail, what you  
5 remember, what stands out in your mind of having read about  
6 the case or seen on TV or heard that's causing you to have  
7 this fixed opinion.

8 In other words, I'd like, sort of test your  
9 memory, to see what you remember having read that's caused you  
10 to have an opinion to remember it and part of the things that  
11 stand out in your mind.

12 THE WITNESS: The two bodies laying in the ditch and  
13 the very fact that every time I go by the area where they are  
14 I still remember it.

15 THE COURT: Of course you going by the area, that  
16 doesn't have anything to do with what you've read then?

17 THE WITNESS: And for the fact that what is in the  
18 papers; there are other bodies involved than just here.

19 THE COURT: I see.

20 THE WITNESS: In Valley County.

21 THE COURT: That fact is affecting you?

22 THE WITNESS: Yes.

23 THE COURT: And an alleged fact?

24 THE WITNESS: Yes.

25 THE COURT: All right, we'll excuse you. We appreciate

1 your frankness, Mrs. Whitaker.

2 We do have another trial scheduled for June 5th  
3 at 10:00 so you'll have to remember that date and, unless you  
4 are notified in the meantime by the Clerk, that the case has  
5 gone off. Thank you.

6 THE CLERK: Sharon Corbin.

7 MR. REMAKLUS: I don't have a qualification form here  
8 on her.

9 I really don't have any objection, maybe just a  
10 little more leeway on the initial examination is all I have in  
11 mind, Your Honor.

12  
13 SHARON N. CORBIN,  
14 a prospective juror herein, having been first duly sworn, took  
15 the stand and testified as follows:

16  
17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q Mrs. Corbin, the jury selection in this matter is  
20 a little different from the usual procedure and the first  
21 thing is kind of been divided into two parts. The first thing  
22 we wish to discuss with you is the matter of newspaper  
23 articles, television broadcasts, conversations and things of  
24 that nature or any what we refer to as pretrial publicity.

25 Now, have you followed this matter in the papers?

1 A. I haven't read about it, but I've heard about it.  
2 Q. And have you seen anything about it on television?  
3 A. Seems like we saw some pictures but, as far as what  
4 was said, I do not remember.  
5 Q. Nothing about that that's caused you to have any  
6 preconceptions, then, is there?  
7 A. No.  
8 Q. Um-hmm. Have you ever talked to anybody that  
9 claimed to know what -- about the facts of the case or anything  
10 like that?  
11 A. I've heard various things but I don't know how  
12 true they would be.  
13 Q. These things haven't caused you to have any  
14 preconception here in this case, have they?  
15 A. No.  
16 Q. As far as you are concerned, then, you've got -- you  
17 have a free and open mind if you are selected here as a trial  
18 juror?  
19 A. That's right.  
20 Q. Have you ever been a juror before, Mrs. Corbin?  
21 A. No, I haven't.  
22 Q. If you are selected here the Judge will read the  
23 instructions that give you the law of this case and, then, you  
24 have to follow those.  
25 A. Um-hmm.

1 Q Now, I'm sure that in these instructions the Judge  
2 is going to instruct you to base your decision only upon the  
3 evidence that you would see and hear right here in the courtroom.  
4 You feel that you can follow that instruction?

5 A I would certainly try.

6 Q And if the Judge instructs you that the defendant  
7 is presumed to be innocent until proven guilty, you'd follow  
8 that instruction as well, I assume?

9 A Yes, I would.

10 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

11  
12 VOIR DIRE EXAMINATION

13 BY MR. HOWER:

14 Q Mrs. Corbin, you mentioned that you have heard a  
15 good bit of talk, or some talk, about this case?

16 A Um-hmm.

17 Q Have you heard talk about other possible crimes  
18 that Mr. Creech may have been involved with, or may have  
19 committed or may have been charged with in other states?

20 A The only thing that I have heard to my understanding  
21 is that there are other crimes in other states and that's all  
22 I know about.

23 Q You don't know what the crimes are?

24 A I don't know the states or the crimes.

25 Q Do you have any feeling as of this point as to

1 whether Mr. Creech is more likely than not guilty of any other  
2 of these offenses in other states?

3 A. I haven't seen anything to where he is completely  
4 guilty, no.

5 Q. Have you heard anyone express in an outright opinion  
6 as to whether Mr. Creech is probably guilty of the offenses  
7 charged here?

8 A. I have heard that they think he's guilty, yes.

9 Q. Have you heard any discussion of the probable  
10 reasons why he's guilty --

11 A. No.

12 Q. -- by other people?

13 A. Other than that there was a girl prosecuted for two  
14 years or something and that's all I know.

15 But, I don't know if it's the same crime.

16 Q. Yes. You appreciate, Mrs. Corbin, that in our legal  
17 system a person accused of crime is entitled to be presumed  
18 innocent unless his guilt is proved --

19 A. Yes, I do.

20 Q. -- beyond a reasonable doubt?

21 A. By all means.

22 Q. Do you agree with that?

23 A. Yes.

24 Q. If you were to sit on the jury in this case,  
25 Mrs. Corbin, can you start free of any preconceptions or

1 impressions that you may have as a result of the conversations  
2 you've heard?

3 A. Yes, I believe so.

4 Q. Do you feel you could be fair, a fair juror, for  
5 Mr. Creech?

6 A. Yes, I do.

7 MR. HOWER: Pass for cause, Your Honor.

8

9 FURTHER VOIR DIRE EXAMINATION

10 BY MR. REMAKLUS:

11 Q. Mrs. Corbin, do you have small children at home?

12 A. I have three teenagers.

13 Q. And if you are selected here and if it takes a  
14 few days, can you make arrangements for the children to be  
15 properly looked after?

16 A. Yes, I can.

17 Q. And have you ever been a juror before?

18 A. Never.

19 Q. I guess maybe I asked you that, I don't remember.

20 Of course, the Judge will instruct you and you are  
21 bound to follow those instructions, you must do so.

22 Have you ever given the death penalty any consideration,  
23 Mrs. Corbin?

24 A. I believe in it. It depends on the circumstances.

25 Q. In other words, you'd have to be convinced that

1 beyond a reasonable doubt; is that correct?

2 A. Right, um-hmm.

3 Q. Fine. And if the State meets that obligation, then,  
4 you could render your verdict based on the evidence?

5 A. Right.

6 Q. Do you understand, Mrs. Corbin, that it is not the  
7 function of the jury to set the penalty in a criminal case?

8 A. I understand that.

9 Q. The Judge -- the law fixes the penalty and the  
10 Judge pronounces judgment and your duty as a juror will be to  
11 determine the facts; that is, guilty or not guilty.

12 A. Right.

13 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

14  
15 FURTHER VOIR DIRE EXAMINATION

16 BY MR. HOWER:

17 Q. Mrs. Corbin, I don't want to offend you and I don't  
18 want to pry unnecessarily, but you will appreciate that we have  
19 to be careful --

20 A. Right.

21 Q. -- about these things.

22 You are aware that you are now under oath?

23 A. Yes, I do.

24 Q. I want to ask you, Mrs. Corbin, what the oath means  
25 to you.

1 A. Means that you should say the truth in all ways.  
2 Q. Do you think of yourself as a religious person?  
3 A. No, I don't.  
4 Q. You do not?  
5 A. No.  
6 Q. The sanction of the oath, then, is a civil sanction  
7 or your conscience but not possible punishment if you should  
8 violate it?  
9 A. I think you should take what you hear into all  
10 considerations but you pass judgment.  
11 Q. Yes. I want to ask you, Mrs. Corbin, if you feel  
12 easy in your conscience --  
13 A. Yes, I do.  
14 Q. -- in accepting the possibility of sitting on this  
15 jury?  
16 A. Yes, I would.  
17 Q. You are not willing to sit on the jury because you've  
18 made up your mind what should be done with Mr. Creech and you  
19 want to have a part in doing it?  
20 A. No.  
21 Q. You are giving him a fair break in your deepest  
22 thought at this moment?  
23 A. I believe I would, yes.  
24 MR. HOWER: We accept Mrs. Corbin for cause, Your Honor.  
25 THE COURT: We'll ask you to go back and remain in the



1 American Legion Hall, Mrs. Corbin. I'll ask you not to discuss  
2 the questioning that took place here with the other jurors.

3 THE WITNESS: Okay. Thank you.

4 THE CLERK: William J. Godfrey.

5  
6 WILLIAM J. GODFREY,  
7 a prospective juror herein, having been first duly sworn, took  
8 the stand and testified as follows:

9  
10 VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q Mr. Godfrey, in the jury selection in this case it's  
13 been kind of divided into two portions and the first thing we  
14 wish to discuss with you pretrial publicity and I'm referring to  
15 newspaper articles, television, radio broadcasts, conversations  
16 that you have, or may have, engaged in, or conversations you  
17 may have overheard.

18 As closely as possible we're going to confine our  
19 questions to you at this time to those things.

20 Now, have you followed this in the papers?

21 A Yes, I have.

22 Q And have you checked -- have you seen the TV  
23 broadcasts?

24 A No, I haven't got any TV.

25 Q Have you made any particular point in following this

1 in the papers?

2 A. Everything I can find.

3 Q. And how recently have you -- strike that.

4 In -- have you had conversations about this?

5 A. Well, yes, people talk about it.

6 Q. If you are selected as a juror on this matter, you  
7 are going to sit here and try the case. Could you put these  
8 things that you may have read or heard to the back of your mind  
9 and give Mr. -- or the defendant here in this case, could you  
10 give him a fair and impartial trial?

11 A. Well, I don't know. Be pretty hard.

12 Q. I see you've been a juror before but it's quite  
13 awhile ago.

14 Now, if you are selected here, Mr. Godfrey, the  
15 Judge, as part of his duty, is going to read you the instructions  
16 which contains the law as far as this case is concerned and,  
17 as a juror, you would have to follow the law as he gives it to  
18 you.

19 Now, I'm sure you would be willing to follow those  
20 instructions; would you not?

21 A. Oh, yes.

22 Q. Now, if the Judge were to instruct you that you had  
23 to base your decision solely on the evidence that is produced  
24 here in this courtroom; that you could also follow that  
25 instruction, couldn't you?

1 A. Yes.

2 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

3

4 VOIR DIRE EXAMINATION

5 BY MR. HOWER:

6 Q Mr. Godfrey, you mentioned that you have read all  
7 you can find about this case in the newspaper.

8 A I couldn't understand you.

9 Q You mentioned that you have read all you could find  
10 about this case in the newspaper?

11 A Yes.

12 Q And you mentioned that you had talked about it;  
13 that there was talk about it.

14 Have you been involved in a great deal of  
15 conversation about the case?

16 A Pardon?

17 Q Have you been involved in a great deal of  
18 conversation, of talk?

19 A Oh, not too much, no.

20 Q Pardon?

21 A Not too much, no.

22 Q Not too much? In the course of those conversations,  
23 Mr. Godfrey, have you ever expressed an opinion to anyone as to  
24 whether Mr. Creech was probably guilty or not?

25 A Yes, I expect I have.

1 Q Do you have such an opinion at this time?  
2 A How?  
3 Q Do you have such an opinion at this time?  
4 A Well, from what I read and everthing I have, yes.  
5 Q Do you have any opinion, Mr. Godfrey, as to whether  
6 Mr. Creech is probably guilty of crimes of some kind in other  
7 states besides Idaho?  
8 A I don't understand you yet.  
9 Q Do you have an opinion as to whether Mr. Creech is  
10 probably guilty of crimes in other states?  
11 A Yes.  
12 Q Would that influence your opinion as to whether  
13 he's probably guilty of a crime here?  
14 A Well, probably would, yes.  
15 Q Now, when asked, Mr. Godfrey, you said you thought  
16 you could follow an instruction from the Judge that you were to  
17 decide this case only on the basis of the evidence. Do you  
18 really think you could do that?  
19 A Whatever the Judge said, that would be the law;  
20 wouldn't it? That is what you have to follow.  
21 Q That would be the law, Mr. Godfrey, but we're all  
22 human and everybody recognizes that.  
23 Let me put it this way: In our system of law,  
24 Mr. Godfrey, Mr. Creech is entitled to be presumed innocent  
25 until he's proved guilty. As of this minute do you presume

1 Mr. Creech to be innocent?

2 A. Well, I wouldn't hardly know. As you said, you  
3 aren't supposed to read in the paper, but everything ties right  
4 together.

5 Q. Does that mean, Mr. Godfrey, that you do not, at  
6 this point, presume Mr. Creech to be innocent?

7 A. Well, yes, it does.

8 Q. All right. Now, if the Judge should say to you, if  
9 you are about to be sworn on the jury and the Judge should say  
10 to you, "Beginning now you presume Mr. Creech to be innocent."  
11 In your deepest thoughts, could you do that?

12 A. I didn't understand your question.

13 Q. Could you do that?

14 A. I didn't understand your question.

15 Q. Okay. You have said that you do not now presume  
16 Mr. Creech to be innocent. If the Judge told you you must  
17 presume him innocent, would you then presume him innocent?

18 A. Well, I would imagine so. Of course, I said I  
19 would do what the Judge said according to his instructions.

20 MR. HOWER: I challenge the juror.

21 THE WITNESS: If -- it might be against my belief, but  
22 if his instructions was that --

23 MR. HOWER: I challenge the juror for cause.

24 THE COURT: Take an exception?

25 MR. REMAKLUS: Well, I do, because Mr. Godfrey here is

1 giving some honest and straightforward answers and I'm not  
2 satisfied that some of the questions propounded by Counsel were  
3 exactly clear, Your Honor.

4 THE COURT: Do you want to ask further questions?

5 MR. REMAKLUS: Yes.

6  
7 FURTHER VOIR DIRE EXAMINATION

8 BY MR. REMAKLUS:

9 Q To get back to the presumption of innocence if this  
10 -- if the Judge tells you that as a matter of law this man is  
11 presumed to be innocent until proven guilty beyond a reasonable  
12 doubt, you are going to follow that instruction; are you not,  
13 Mr. Godfrey?

14 A Yes.

15 MR. REMAKLUS: I'm going to resist the challenge,  
16 Your Honor.

17 THE COURT: Let me ask you a couple of questions,  
18 Mr. Godfrey. I appreciate your willingness to follow the  
19 Court's instructions and I'm sure you feel that way; that you  
20 should do that and would certainly try.

21 I guess what we're really talking about is, knowing  
22 human frailties and human capacities, whether it would really  
23 be possible for you to do that; even though you wanted to and  
24 would try.

25 Now, you've indicated you have some rather fixed

1 ideas about this from what you read, is that right?

2 THE WITNESS: Yes.

3 THE COURT: Can you tell me what those impressions, ideas  
4 or opinions are based on in a little more detail?

5 What is it that you read about the case that's  
6 caused you to have the opinion? What stands out in your mind  
7 of some of these things you've read?

8 THE WITNESS: Well, I wouldn't really know. But, then,  
9 I read everything I could find about the plane wreck down in  
10 California and everything about what the papers all said about  
11 it.

12 THE COURT: Okay. What do you remember they said about  
13 the plane wreck? Why were they down there and do you remember  
14 what it said about that?

15 THE WITNESS: About what?

16 THE COURT: Why were they down there?

17 THE WITNESS: Looking for some dead bodies.

18 THE COURT: What?

19 THE WITNESS: Looking for some dead bodies.

20 THE COURT: I see. Have you read things about that in  
21 other articles?

22 THE WITNESS: No, just in the paper.

23 THE COURT: You mean in the paper, have you read other  
24 articles about other bodies?

25 THE WITNESS: Oh, yeah.

1 THE COURT: Is that one of the facts that stands out in  
2 your mind here?

3 THE WITNESS: Yes, it is.

4 THE COURT: Mr. Godfrey, you've indicated you would try  
5 to follow my instructions; that the defendant is presumed  
6 innocent at the start of the trial.

7 Let me ask you this: Do you feel, though,  
8 searching your mind, that it would require some evidence on his  
9 part to remove these opinions you have? Would he have to prove  
10 -- give you some proof that showed he wasn't guilty?

11 THE WITNESS: Yes, he would.

12 THE COURT: Well, I'm going to grant the challenge. We  
13 appreciate your frankness, Mr. Godfrey, that's what we wanted  
14 you to tell us; what you felt and I don't want you to feel you  
15 are shirking your duties by it.

16 You are excused, we appreciate your being honest  
17 with us and telling us how you felt about it. But, I feel we'll  
18 excuse you.

19 We have another trial scheduled on June 5th at  
20 10:00 if you will remember that date.

21 THE WITNESS: June 5th?

22 THE COURT: Yes, at 10:00, if you will come back here  
23 then. You can go now. Thank you.

24 THE CLERK: Harold Bolt.  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HAROLD M. BOLT,

a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mr. Bolt, jury selection in this case has been  
sort of divided into two parts and the first part of it is  
going to be concerned with pretrial publicity, newspaper  
articles, radio and television and things of that nature.

Have you had any particular occasion to follow this  
thing in the newspapers?

A Well, I've read articles, I guess, you know, since  
the incident.

Q Since it happened here?

A Yes.

Q Um-hmm. I'm assuming you've seen TV broadcasts,  
have you?

A Yes, I have.

Q And have there been any conversations around work  
concerning this case that you consider to have any significance  
at all?

A No, I don't believe so.

Q Mr. Bolt, if you are selected here as a trial juror  
in this case, could you put what you may have read or heard

1 about it aside and render a fair and impartial verdict based  
2 solely and only on the evidence that you would see and hear right  
3 here in the courtroom?

4 A. Well, I believe in the judicial system and I think  
5 I would -- could be fair and objective and assume innocence  
6 until guilt was proven.

7 Q. Yes. And I see you haven't been a juror before,  
8 Mr. Bolt?

9 A. Yes, I was a juror last week.

10 Q. Oh, fine. Well, then, it is fresh in your mind  
11 about receiving the instructions from the Court?

12 A. Yes.

13 Q. And you are bound to follow those as to the law?

14 A. Yes, sir.

15 Q. And I know you remember that it's the duty of the  
16 State to prove the guilt beyond a reasonable doubt.

17 A. Yes, sir.

18 Q. And it --

19 MR. REMAKLUS: I think we'll pass the juror for cause,  
20 Your Honor.

21 MR. HOWER: Pass for cause, Your Honor.

22 THE COURT: Mr. Bolt, just let me ask you one question.  
23 You did indicate you have read some newspaper articles and  
24 watched some TV broadcasts involved in this case?

25 THE WITNESS: Yes, I have.

1 THE COURT: Are there any particular facts that stand  
2 out in your memory that you read in these articles or heard on  
3 the TV at this point as you sit here today?

4 THE WITNESS: I don't believe any one particular thing  
5 would be standing out in my mind, no, sir.

6 THE COURT: Can you tell me some of the things you do  
7 remember reading?

8 THE WITNESS: Well, I remember I read about the airplane  
9 incident just most recently and other than this, I think it's  
10 been long enough ago that no particular incidents would stand  
11 out in my mind.

12 THE COURT: Have you read any of the articles within the  
13 last five days here, Sunday's --

14 THE WITNESS: I haven't read anything since I was on the  
15 jury last week, I don't believe.

16 THE COURT: You haven't read anything?

17 THE WITNESS: No.

18 THE COURT: All right, proceed.

19

20 FURTHER VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q Mr. Bolt, the next portion of questioning would be  
23 rather to general qualifications.

24 A Yes.

25 Q And does the attorney-client relationship exist

1 between you and Mr. Hower?

2 A. No.

3 Q. And proper arrangements can be made as far as your  
4 employment is concerned, if you are selected here as a trial  
5 juror, is that right?

6 A. Yes.

7 Q. If the jury is sequestered and you have to stay  
8 away from them, then, Mrs. Bolt will be home to look after the  
9 kids?

10 A. Yes, I've made any necessary arrangements just in  
11 case.

12 Q. All right. Have you ever given any consideration,  
13 Mr. Bolt, to the death penalty?

14 A. Yes, I've thought about it.

15 Q. Do you feel that there's anything in your thoughts  
16 that would interfere with you rendering a verdict in this case;  
17 based on the law and the evidence, the evidence to be produced  
18 in the courtroom and instructions given to you by the Judge?

19 A. I don't think I understand, Mr. Remaklus.

20 I don't know what the Idaho law is and --

21 Q. Fine. I don't think it was a fair question,  
22 Mr. Bolt, so I'll try to rephrase it.

23 A. All right.

24 Q. As a juror I'm sure you understand that it is not  
25 your function to pronounce judgment. You'll find guilt or

1 innocence.

2 A. Yes, all right, yes.

3 Q. Yes. And, as far as what penalties are, that's  
4 fixed by the legislature.

5 A. Yes.

6 Q. And you, as a juror, have no control there, you  
7 understand that?

8 A. Yes, I understand that.

9 Q. And you know that any penalty that's handed out in  
10 this case is going to be pronounced by the Judge and that that  
11 is not a function of you as a juror.

12 A. I understand, yes.

13 Q. And I'm sure you are familiar with the presumption  
14 of innocence?

15 A. Yes.

16 Q. You are willing to give the defendant that benefit?

17 A. Yes, I am.

18 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

19

20 FURTHER VOIR DIRE EXAMINATION

21 BY MR. HOWER:

22 Q. Mr. Bolt, are you socially acquainted with  
23 Mr. Remaklus?

24 A. No, I don't think we've ever socialized. I've  
25 known Mr. Remaklus for a number of years because I used to live

1 in Cascade.

2 Q You lived in Cascade as a Forest Ranger, is that  
3 right?

4 A Yes.

5 Q What years did you live here?

6 A '62 to '69.

7 Q Mr. Bolt, you and -- you are socially acquainted --

8 A Yes, I would say we are --

9 Q -- acquainted?

10 A We are acquainted. I don't think we're intimate.

11 Q Is there anything in that relationship which would  
12 impair your judgment according to your oath on a murder case?

13 A I don't think so. I thought about this on the way  
14 down this morning and I think I put you two on a par as how well  
15 I know both of you.

16 Q Even if you didn't, you would not decide the case  
17 on whether you like me or Mr. Remaklus or whether you know us  
18 or anything like that?

19 A No.

20 Q Sometimes we negative or omit in questioning to  
21 touch upon something that is of concern to you. I want to ask  
22 if there's any reason whether or not it's -- Mr. Remaklus or I  
23 have touched upon it, is there any reason why it would be a  
24 hardship or painful or difficult or a problem in your conscience  
25 for you to serve as a juror in this cause?

1           A.     I don't believe so. I think I have a right frame of  
2 mind as far as the judicial system is concerned.

3           MR. HOWER: Pass this juror for cause, Your Honor.

4           THE COURT: We'll ask you to go back over to the American  
5 Legion Hall, Mr. Bolt, and remain there and you are not to  
6 discuss the questioning here with the other jurors.

7           THE WITNESS: Yes.

8           THE CLERK: Alice Ange.

9  
10                           ALICE I. ANGE,  
11 a prospective juror herein, having been first duly sworn, took  
12 the stand and testified as follows:

13  
14                           VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16           Q.     Mrs. Ange, jury selection in this matter has been  
17 divided into two portions and the first thing that we wanted to  
18 discuss with you is the pretrial publicity; consisting of  
19 newspaper articles, radio and television broadcasts and things  
20 of that nature.

21                   May I inquire as to whether or not you have had  
22 occasion to follow this in the newspapers?

23           A.     I did when it first came out, yes.

24           Q.     And of late, have you seen anything about it in the  
25 papers?

1           A.     Just what was in Sunday's paper.

2           Q.     And have you folks watched television in the  
3 evening?

4           A.     Some.

5           Q.     Have you seen it on the news occasionally?

6           A.     Yes.

7           Q.     Mrs. Ange, have you had occasion to discuss this  
8 at all at work or at home?

9           A.     Not much, no.

10          Q.     Do you feel that anything that you may have read  
11 or heard or talked about would tend to influence you one way or  
12 the other if you are selected as a juror in this case?

13          A.     I don't think so.

14          Q.     I don't think you've been a juror before, have you?

15          A.     No, I have not.

16          Q.     If you are selected as a trial juror, Mrs. Ange,  
17 the Judge will give you the instructions as to what the law is  
18 and that you will have to follow his instructions.

19                 Now, I'm sure that you will want to follow the  
20 instructions; is that correct?

21          A.     Um-hmm.

22          Q.     Now, in the event you might have a different opinion  
23 as to what the law is, or should be, you would still have to  
24 follow what His Honor instructs you and this would present no  
25 difficulty; would it?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. No.

Q. Now, so far as you are concerned at this point, you feel that you could render a fair and impartial verdict in this case based solely on the evidence that you would get here in the courtroom?

A. I'm sure I could.

MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q. Mrs. Ange, in your business you have occasion to meet the public; is that correct?

A. Yes.

Q. And you, yourself, work there so that when people come in and out you chat with them?

A. Yes.

Q. In that connection at your business, or at your home or in your social life or any place else, have you heard very much conversation about this case?

A. Oh, some, not --

Q. When the case has come up as the subject of conversation, have you participated, or just listened or what?

A. I don't say too much because I don't --

Q. You what?

A. I say, I don't say too much because I just don't

1 know the facts.

2 Q Have you listened?

3 A More or less.

4 Q Have you heard any conversation in which people

5 talked as if they knew what had happened?

6 A Well, I've heard remarks both ways.

7 Q Both ways? What do you mean by that?

8 A Some have more understanding than other people, and

9 as you should know.

10 Q Mrs. Ange, have you heard anyone express an opinion

11 in any way sympathetic to Mr. Creech?

12 A Not to him, no.

13 Q Have you heard anyone express an opinion indicating

14 that they believed that Mr. Creech to be guilty?

15 A Several.

16 Q Isn't it true, Mrs. Ange, that every opinion you've

17 heard has been to that effect?

18 A But, I don't voice my own opinions because I feel,

19 being a Christian, I don't have a right to.

20 Q You don't have a right?

21 A No.

22 Q You have, then, expressed your own opinion in the

23 course of these conversations?

24 A Like I say, the circumstances, I don't really know

25 enough to really say one way or another.

1 Q Has it been your opinion, Mrs. Ange, that you ought  
2 not to have an opinion until you know what the facts are?  
3 A Yes.  
4 Q Is that still your opinion?  
5 A (No audible response.)  
6 Q Mrs. Ange, have you heard talk or conversation  
7 about the possibility that Mr. Creech is connected with crimes  
8 in some other state?  
9 A No, I have not.  
10 Q I did not --  
11 A No.  
12 Q You haven't heard anything about that at all?  
13 A No.  
14 Q We've talked to so many prospective jurors I might  
15 have missed an answer to this question. Did you say you had not  
16 read newspaper stories about the case?  
17 A Yes, I have read some when they first came out.  
18 Q Do you recall in any of the newspaper stories that  
19 you read, was there any reference to Mr. Creech's possible  
20 connection with other crimes in other states?  
21 A Just what I've read.  
22 Q Yes, I'm asking you what it was you read. Did you?  
23 A Just that he had been taken to different states on  
24 different --  
25 Q Did you understand for what purpose he was taken to

1 other states?

2 A. As I understand, for murder. I don't know, other  
3 than that.

4 Q Well, Mrs. Ange, we assume that you would try your  
5 best to put these thoughts out of your mind, put this  
6 information out of your mind if you were a juror in this case.

7 But, it's natural for us to be concerned as to  
8 whether you would be able to do this; even though we assume you  
9 would try your best.

10 A. Um-hmm.

11 Q What's your feeling about that?

12 A. Well, I don't really know. Like I say, from a  
13 Christian standpoint, I can't judge. All I can go is by facts.

14 Q Do you have any impression or feeling or  
15 inclination at this moment that Mr. Creech is probably guilty  
16 or probably not guilty of the offenses he's charged with?

17 A. No, I don't.

18 MR. HOWER: Pass for cause, Your Honor.

19

20 FURTHER VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q Mrs. Ange, we'll have some additional questions for  
23 you and if you are selected as a juror, have you, or can you  
24 make arrangements as far as your work is concerned to be away?

25 A. Yes.

1 Q And you don't have any children at home, I see?  
2 A No.  
3 Q Mrs. Ange, have you considered the death penalty?  
4 A I have, but that's one position I hope I never get  
5 put in.  
6 Q If you are a juror, do you have a moral or religious  
7 opinion or attitude concerning the death penalty?  
8 A No.  
9 Q If -- would your feelings regarding the death  
10 penalty interfere with your judgment, or your ability to  
11 return a verdict in this case if you thought the defendant was  
12 guilty and, then, you had to consider the death penalty?  
13 A I don't think so.  
14 Q You believe that you could if the Judge instructs  
15 you that the penalty is not a matter for your consideration.  
16 Could you separate the idea of penalty from the finding of  
17 guilt or innocence?  
18 A Yes.  
19 Q Of course, as a juror your duty would be to determine  
20 the facts and, in this case, will be the fact of guilty or  
21 not guilty.  
22 A Um-hmm.  
23 MR. REMAKLUS: I think we'll pass the juror for cause,  
24 Your Honor.  
25 MR. HOWER: I have a few more questions, Mrs. Ange.

FURTHER VOIR DIRE EXAMINATION

BY MR. HOWER:

Q I want to say, Mrs. Ange, that I don't want to offend you and I don't want to press any more than necessary into private areas, but there are some things we have a right to inquire about.

A Um-hmm.

Q And, in this kind of a case, we must be careful. Do you consider yourself, Mrs. Ange, a religious woman?

A No.

Q You do not?

A No.

Q How do you feel -- what is your feeling about the sanction; that is the authority behind an oath that you take? Do you feel you are at liberty to disobey an oath if you chose to?

A No, I do not.

Q What is your feeling about it?

A Well, I think you have to obey any ruling in the courtroom and I don't think it interferes.

Q I'm not talking so much about legal sanctions whereby the law says you must obey it for the reason that things that are between you and your conscience and can never be proved.

1           A.     Um-hmm.

2           Q.     But I'm talking rather about whether you feel bound  
3 by something that when you take an oath you must do what you  
4 have sworn to do. Do you feel so bound for any reason?

5           A.     No, I don't.

6           Q.     Are you saying, then, Mrs. Ange, that when you take  
7 the oath, which you will be asked to take as a juror in this  
8 cause --

9           A.     Um-hmm.

10          Q.     -- that thereafter you may do something contrary  
11 to that oath if you choose?

12          A.     (No audible response.)

13          Q.     You shook your head. I don't understand what  
14 answer you are intending to say.

15          A.     You are meaning that I -- I'm not getting quite what  
16 you are saying.

17          Q.     I know this is difficult and I'm sorry I even have  
18 to ask. But, I feel I must.

19                 If you're chosen as a juror in this cause, you will  
20 be asked to be sworn --

21          A.     Um-hmm.

22          Q.     -- that you will try the cause well and truly and  
23 that you will --

24          A.     Yes.

25          Q.     -- go by the evidence and by the instructions from

1 the Judge.

2 I'm inquiring as to how you will feel if, after you  
3 take that oath the question should arise in your conscience as  
4 to whether that's what you are going to do or not. I want to  
5 put it to you, Mrs. Ange, in kind of a context that often  
6 arises for jurors. There may come a time when you feel that  
7 evidence which might have been presented for or against the  
8 defendant was not presented. You may feel that you know  
9 perfectly well something is true or that something is not true,  
10 not based on what you hear in this courtroom --

11 A. Um-hmm.

12 Q. -- but based on something else.

13 Now, if that should happen and, even though it  
14 would be a violation of your oath, would you feel that it was  
15 possible for you to go by what you know to be true rather than  
16 what you heard in this courtroom; this is where it comes down  
17 to the nub.

18 A. I really don't know how to answer you.

19 Q. Pardon?

20 A. I said, I really don't know how to answer you.

21 Q. All right. I'll put the question to you just as I  
22 have for a specific answer.

23 Suppose you felt normally, absolutely certain that  
24 something was true but it had not been proved in this courtroom.  
25 Would you then base your verdict in this case in any degree at



1 all on what you knew to be true but what had not been received  
2 as evidence in this courtroom?

3 A No, I don't think so.

4 Q You don't think you would?

5 A (No audible response.)

6 Q I'm asking these questions, Mrs. Ange, because of  
7 what is almost certainly a reality --

8 A Um-hmm.

9 Q -- in this case and that's that you have heard --  
10 we know you have heard, you've said you have heard talk about  
11 it. Many people have opinions about it, many people have  
12 expressed opinions about it and that all this has had some  
13 effect upon you.

14 A Um-hmm.

15 Q Are you able to say with a clear conscience that  
16 in spite of that, knowing that's impressed at present in your  
17 mind, will it have to be displaced by evidence presented for  
18 the defendant or by anything else in order for you to approach  
19 the decision of this case solely on the evidence you hear in  
20 court. Can you do that?

21 A You mean go just by what you hear in the courtroom  
22 and not what I read?

23 Q That's what I meant, not what you've read or heard.

24 A Yes.

25 Q Are you confident you can do that?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. Um-hmm.

MR. HOWER: Pass for cause, Your Honor.

THE COURT: We'll take our noon recess until 1:15.

Mrs. Ange, you can go to lunch now but, when you come back would you go back into the American Legion Hall, please, and remain there.

I'll ask you not to discuss the questioning here that has gone on with any of the other jurors if you do that, please.

THE WITNESS: Okay.

(Noon recess taken.)

1 CASCADE, IDAHO, WEDNESDAY, MAY 21, 1975, 1:18 P.M.

2  
3  
4 THE COURT: Defendant's fourth.

5 THE CLERK: Wesley R. Knee.  
6

7 WESLEY R. KNEE,  
8 a prospective juror herein, having been first duly sworn, took  
9 the stand and testified as follows:  
10

11 VOIR DIRE EXAMINATION

12 BY MR. REMAKLUS:

13 Q Mr. Knee, we first wish to discuss with you any  
14 pretrial publicity which you may have been exposed to; including  
15 newspaper articles, radio and television broadcasts,  
16 conversations that you have engaged in or overheard.

17 We're going to -- at this point we're going to  
18 confine our questions pretty much to that.

19 Now, have you had occasion to follow this case in  
20 the papers?

21 A I read some articles on it, yeah.

22 Q Have you read any recent articles, Mr. Knee?

23 A I believe it was a little article in there Monday  
24 I read, yeah.

25 Q How about -- have you caught it on the news on

1 television?

2 A. I don't remember of.

3 Q. Have you made any particular point of following this  
4 case?

5 A. Not really, no.

6 Q. Have you had any conversations around on the job  
7 about it?

8 A. Probably.

9 Q. Nothing that anyone who purported to know the facts  
10 of it, was there, Mr. Knee?

11 A. No.

12 Q. I notice here on this juror questionnaire now that  
13 you sent in that you've never been a juror before.

14 A. That's right.

15 Q. Now, if you are accepted here you will be instructed  
16 as to the law by the Judge and, of course, you'll have to  
17 follow it. I'm sure one of the instructions will be that you'll  
18 have to base your decision on the case on the evidence you see  
19 and hear right here in the courtroom.

20 Now, do you think you could render a fair and  
21 impartial verdict in this case based on the Judge's instructions  
22 there?

23 A. I don't see why not.

24 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

25

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mr. Knee, do you now have any impression as to whether the defendant is guilty or not?

A No, I don't know enough about it to make the decision about it.

Q Do you recall reading about a trip the defendant took to California a few weeks ago?

A Yes.

Q Do you know what that trip was for?

A Something about finding some bodies or something; wasn't it?

Q Do you know how it turned out?

A No -- well, it did say didn't find nothing, yeah.

Q Is that all you remember about that?

A Yeah, the plane went down coming back.

Q Yes. Is there anything about that, Mr. Knee, that makes you think the defendant is more or less likely to be guilty than if you hadn't read that?

A I don't know. That's all I know about it. I really couldn't say.

Q Does that give you any impression as to whether or not the defendant is guilty?

A No, not really. I don't know enough about it.

Q Have you heard a great deal of talk among your

1 friends or workers at the mill?

2 Have you heard a great deal of talk about this  
3 case?

4 A. Hasn't been much said about it, no.

5 MR. HOWER: Okay. We pass this juror for cause,  
6 Your Honor.

7  
8 FURTHER VOIR DIRE EXAMINATION

9 BY MR. REMAKLUS:

10 Q Mr. Knee, of course I know where you work and I  
11 know you've been there a long time now. Would you be on shift  
12 today if you weren't down here?

13 A. Tonight.

14 Q Um-hmm. Now, if you are selected here as a juror,  
15 proper arrangements can be made so you don't have to worry  
16 about your job?

17 A. No.

18 Q You won't have any qualms about that?

19 A. No.

20 Q Does the attorney-client relationship exist between  
21 you and Mr. Hower? Is Mr. Hower doing any legal work for you?  
22 Or do you just know him as the attorney here that was just  
23 asking you the questions?

24 A. I don't remember knowing him, no.

25 Q Fine. No attorney-client relationship?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. No.

Q. Have you ever given any consideration, Mr. Knee, to the death penalty?

A. Not too much, no.

Q. Do you have any moral or religious opinion with reference to the death penalty?

A. No.

Q. There's nothing in connection with the death penalty, then, that would interfere with your judgment as to guilt or innocence in this case? You could decide -- what I'm asking you is this: Could you base your decision and arrive at your verdict based on the evidence --

A. Yes, sir.

Q. -- that's being presented right here?

A. Yes, sir.

Q. And you understand that the penalty, whatever the law says, that's what it is and that isn't for you to question as a juror, or for me to question as a Prosecutor?

A. Yes, sir.

Q. And if you are selected that your solemn duty will be to determine guilty or not guilty?

A. Yes, sir.

MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

FURTHER VOIR DIRE EXAMINATION

BY MR. HOWER:

Q. Mr. Knee, we have a little form on you and it says that you have a child 34. Is that a boy or girl; man or woman?

A. It's a stepdaughter.

Q. Stepdaughter?

A. Yeah.

Q. Does she have children?

A. Got two boys.

Q. How old are they?

A. One is 16, I think, and one is 12.

Q. Where do they live?

A. Just out of McCall.

Q. Just out of McCall?

A. Yeah, about three and a half miles.

Q. Um-hmm. Mr. Knee, I guess I'll return the compliment, has Mr. Remaklus ever been your lawyer?

A. No.

Q. There's no attorney-client relationship between you?

A. No.

Q. Are you well acquainted with him socially?

A. Mr. Remaklus?

Q. Um-hmm.

A. No, I know him though.



1 Q You know him and you know who he is? But you are  
2 not close friends, you are not intimate friends?

3 A No.

4 Q There's nothing about your relationship with  
5 Mr. Remaklus that would interfere with your decision in this  
6 case?

7 A No, sir.

8 Q How long have you worked at the McCall mill?

9 A About 16 years.

10 Q Sixteen years?

11 A Um-hmm.

12 Q Have you ever held office in the union?

13 A On who?

14 Q Have you ever held office in the union?

15 A Office?

16 Q Yes.

17 A No -- well, I guess I'm trustee now.

18 Q You are trustee now? This is the only union office  
19 you've ever held?

20 A Right.

21 Q Mr. Knee, sometimes there are things that we should  
22 know about and we don't know enough to ask. Is there anything  
23 that we haven't asked about that's on your mind that bears on  
24 the question of whether you are well qualified to be a juror in  
25 this case?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A. No, sir.

Q. You feel that you are well qualified?

A. Well, I really couldn't say. I don't know.

Q. You have no problems with your conscience, no reservations about whether you can sit as a juror?

A. No.

MR. HOWER: Okay. Pass for cause, Your Honor.

THE COURT: Mr. Knee, we'll ask you to wait back in the Hall, the American Legion Hall, and I'll ask you not to discuss the questioning here with the other jurors, the questions that were asked.

THE WITNESS: Yes, sir.

THE COURT: You may leave.

MR. REMAKLUS: May I have just a moment, Your Honor.

THE COURT: Yes.

THE CLERK: Janice Lynn Wilde.

JANICE LYNN WILDE,  
a prospective juror herein, having been first duly sworn, took the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mrs. Wilde, jury selection in this case is divided into two parts, the first part we wish to discuss with

1 you concerns pretrial publicity consisting of newspaper  
2 articles, television, radio broadcasts, conversations you may  
3 have heard and as nearly as possible we're going to try to  
4 limit our questions at this time, you know, to those things.

5 A. Um-hmm.

6 Q. Have you followed this case in the paper?

7 A. Yes, I have.

8 Q. And have you followed it, or have you seen  
9 television broadcasts of it?

10 A. Yes, I have.

11 Q. And you are strictly a housewife now; aren't you?

12 A. Yes, I am.

13 Q. Have you had any conversations with anyone  
14 regarding this case; including your husband?

15 A. Well, you mean recently?

16 Q. Well -- yes, um-hmm, recently.

17 A. No, I haven't.

18 Q. And have you ever expressed an opinion yourself  
19 as to guilt or innocence or anything like that?

20 A. No, I haven't.

21 Q. You've never been on a jury before, have you?

22 A. No, sir.

23 Q. Now, if you are selected the Judge will give you  
24 -- he will read you instructions which set forth the law that  
25 pertains to this case and I'm sure one of the instructions will

1 be that you'd have to make up your mind as to guilt or  
2 innocence based on the evidence that you would see and hear  
3 right here in the courtroom.

4 Now, this being the case, do you feel that you could  
5 exclude from your mind information you may have picked up from  
6 other sources and be completely fair and impartial as to --

7 A. Yes, I could.

8 Q. You haven't got any preconceived ideas about this  
9 case because of something you may have read, is that right?

10 A. That's right.

11 Q. I don't remember whether I've asked you, but have  
12 you seen enough on television about it to make any impression,  
13 Mrs. Wilde?

14 A. No, I haven't.

15 MR. REMAKLUS: We'd pass the juror for cause,  
16 Your Honor.

17 MR. HOWER: We'll pass Mrs. Wilde for cause.

18  
19 FURTHER VOIR DIRE EXAMINATION

20 BY MR. REMAKLUS:

21 Q. We have some more questions to touch upon other  
22 things that would have to do with jury service and I notice ---  
23 are all the kids, all four of them, at home?

24 A. Yes, they are.

25 Q. Now, if you are selected as a juror and if you

1 have to spend your nights away from home, have you made  
2 provision, or can you make provision, for the children to be  
3 properly cared for?

4 A. Yes, I can.

5 Q. You feel in your mind that you would have the --  
6 that you would have the time, then, to devote to the trial and  
7 not be distracted by worrying about the kids or Mr. Wilde?

8 A. Bob is in the hospital right now, he had a back  
9 injury last Wednesday and I consulted with the doctors and  
10 said if he got worse they would send him to Boise, either  
11 today or tomorrow. But, he is better, so they're probably  
12 going to discharge him from the hospital Friday or Saturday.  
13 So, there's --

14 Q. He's there at McCall, staying there, is that  
15 right?

16 A. Yes, he is.

17 Q. Um-hmm. You think that's going to be unsettling,  
18 that aspect of it, Mrs. Wilde?

19 A. No.

20 Q. Have you ever given any consideration to the death  
21 penalty in criminal cases, Mrs. Wilde?

22 A. I've thought about it seriously and it's kind of  
23 hard to really -- you would have to put all your time and  
24 effort into a trial, I feel, and, if no doubts are in your  
25 own mind because that is a big step to take.

1 Q Do you have a fixed opinion in opposition to the  
2 death penalty?

3 A No, I don't.

4 Q Do you think that this being a capital case that  
5 that would interfere, or influence you any in arriving at  
6 your decision based on the evidence?

7 A No.

8 Q Mrs. Wilde, in a criminal trial I'm sure the  
9 Judge is going to -- in this trial the Judge will instruct you  
10 that the penalty is not the province or the concern or  
11 function of the jury and that your duty as a juror will be to  
12 determine the facts.

13 In other words, you are going to -- you are going  
14 to consider the evidence and arrive at a decision as to guilt  
15 or innocence.

16 Now, do you think you can separate penalty from  
17 guilt or innocence?

18 A It's hard because I naturally think that if  
19 someone is going -- was going to happen to them, you can't --  
20 it would be hard to block it out of your mind. But, if I was  
21 picked as a juror I would give all my attention to the trial  
22 and I think that I could separate it.

23 Q All we're looking for is 12 people who will be  
24 fair and arrive at a fair and equitable decision in this matter.

25 I'm sure the Judge will advise you that there's a

1 presumption of innocence on the part of the defendant until  
2 proven guilty beyond a reasonable doubt.

3 Now, if in your mind at the conclusion of the  
4 evidence the State has met that obligation and proved guilt  
5 beyond a reasonable doubt, will the death penalty keep you from  
6 rendering a final decision of guilt in this matter?

7 A. No, it will not.

8 MR. REMAKLUS: Fine. We'll pass the juror for cause,  
9 Your Honor.

10  
11 FURTHER VOIR DIRE EXAMINATION

12 BY MR. HOWER:

13 Q. Mrs. Wilde, does your husband have any pretty  
14 strongly held opinions about what ought to be done with  
15 Mr. Creech?

16 A. No.

17 Q. He does not?

18 Did you grow up in the McCall area?

19 A. Yes, I did.

20 Q. Did you graduate from McCall High School?

21 A. Yes, I did.

22 Q. What year?

23 A. 1971.

24 Q. I don't remember whether Mr. Remaklus asked you  
25 or not, but do you subscribe, in your home, to the Idaho

1 Statesman?

2 A. Yes, we do.

3 Q. What other newspapers or publications do you  
4 subscribe to?

5 A. No others.

6 Q. It's not the Star News?

7 A. The Star, just the Star.

8 Q. The Star News? But not any other newspapers or  
9 publications?

10 A. No.

11 Q. No other magazine?

12 A. No.

13 Q. Are there any other magazines that you or your  
14 husband buys regularly?

15 A. No.

16 Q. Is there anything, Mrs. Wilde, about the prospect  
17 of sitting as a juror in this cause that troubles you in your  
18 conscience that we haven't asked you about? Do you have any  
19 problems with it that you can't cope with?

20 A. No.

21 MR. HOWER: Pass for cause, Your Honor.

22 MR. REMAKLUS: Your Honor, I forgot to point out that  
23 Mr. and Mrs. Wilde in the past have been clients of my office  
24 and there's nothing going on. I'm not representing them at  
25 the present time. I think that's been, what, a year or two



1       ago; has it not?

2               THE WITNESS: Yes, it has been.

3               THE COURT: Want to ask some more questions, Mr. Hower?

4               MR. HOWER: Mrs. Wilde, I don't have any problems with  
5       this. I guess I'll ask you to say there's nothing in your  
6       professional relationship, or your husband's with  
7       Mr. Remaklus that would interfere with your conscience and  
8       your judgment in deciding this case.

9               THE WITNESS: None.

10              MR. REMAKLUS: I can't imagine that it would.

11              MR. HOWER: No further questions, Your Honor.

12              THE COURT: Mrs. Wilde, we'll ask you to go back and  
13       wait in the American Legion Hall and ask you to please not to  
14       discuss the questions that have been asked you or anything  
15       with the other jurors.

16              THE WITNESS: Okay.

17              THE CLERK: Ina Heinrich.

18

19

20

21

22

23

24

25

1 INA LEOTA HEINRICH,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mrs. Heinrich, the jury selection in this case  
8 has been divided into two areas and the first thing that we  
9 wanted to discuss with you is the matter of pretrial publicity  
10 consisting of newspaper articles, television reports,  
11 conversations that you may have engaged in or overheard, you  
12 see.

13 As nearly as possible we're going to try to  
14 confine our questions at this time to that area.

15 Now, have you followed this in the papers?

16 A Read Sunday morning's paper and I've heard it on  
17 the television and that's all.

18 Q You have read no other papers?

19 A (No audible response.)

20 Q Then, obviously you have made no attempt to follow  
21 this case in either the press or on television?

22 A No.

23 Q Thank you. Have you been a juror before?

24 A No.

25 Q You've been -- have you been retired from

1 teaching for quite some time?

2 A. No, just this last year is my first year entirely.

3 Q. You taught last year but not this?

4 A. Um-hmm.

5 Q. Then, have you been present at any conversations  
6 concerning this matter that particularly stand out in your  
7 mind?

8 A. No.

9 Q. You never made any observations as to guilt or  
10 innocence; anything of that nature?

11 A. (No audible response.)

12 Q. Mrs. Heinrich, if you are selected as a juror the  
13 Judge will give you the instructions as to what the law is and  
14 you are going to have to follow those instructions.

15 Now, I'm sure that one of them will be that you'll  
16 have to base your decision in this matter on the evidence that  
17 you see and hear in the courtroom without reference to other  
18 outside matters. You think in your present frame of mind that  
19 you would have any difficulty in following His Honor's  
20 instructions?

21 A. I don't think so.

22 MR. REMAKLUS: I don't either.

23 I'm going to pass Mrs. Heinrich for cause,  
24 Your Honor.

25

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mrs. Heinrich, --

THE COURT: We have a report that one of the prospective jurors, he hasn't been drawn, Ted Maempa, is ill and is there any objection to excusing him at this time?

MR. REMAKLUS: I have none.

MR. HOWER: No objections.

THE COURT: All right, tell Mr. Maempa he will be excused. Tell him he should report again on June the 5th at 10:00.

VOICE: He's got high blood pressure.

THE COURT: Just excuse him from further jury service.

All right, you may proceed, Mr. Hower.

Q BY MR. HOWER: Mrs. Heinrich, have you heard from many conversations touching upon the Creech case?

A. Some, yes.

Q In the course of those conversations, has anyone in your presence expressed an opinion as to his probable guilt or innocence?

A. Yes.

Q Was any of these your husband?

A. No.

Q Or any other close relative?

A. No.

1 Q I'm ashamed to have to ask, but are you the  
2 sister-in-law to Otto Heinrich or not the same family?

3 A No, I'm not.

4 Q Otto Heinrich is not your husband's brother?

5 A No.

6 Q I wasn't sure.

7 MR. REMAKLUS: I might interject, if I may, Your Honor,  
8 if you are referring to Adolph --

9 MR. HOWER: Oh, I'm sorry. Adolph is your  
10 brother-in-law?

11 THE WITNESS: Yes.

12 MR. HOWER: Thank you, Counsel.

13 Q BY MR. HOWER: Has any of these conversations,  
14 Mrs. Heinrich, or expressions of opinion, had a major effect  
15 upon your own views as to whether or not Mr. Creech is  
16 probably guilty?

17 A There probably have, yes. I'm sure you can't  
18 hear something about, you know, being influenced by it.

19 Q Okay. Then, is it correct to say that you do now  
20 have some view as to whether Mr. Creech is probably guilty or  
21 not?

22 A I really can't say that I know enough about it to  
23 have formed an opinion.

24 Q Do you have some impression, maybe, but not really  
25 an opinion; is that correct?

1 A. That's right.

2 Q. Mrs. Heinrich, is there anything in this  
3 impression that you would have difficulty putting out of your  
4 mind if you were selected as juror in this case?

5 A. It's a little bit difficult to answer.

6 Q. I know it is.

7 A. I don't know.

8 Q. The reasons it's taken us to today to do this is  
9 because the questions are hard, Mrs. Heinrich.

10 A. I don't really know.

11 Q. Yes. Do you understand there's a principle in our  
12 legal system --

13 A. Yes.

14 Q. -- that the accused is entitled to the presumption  
15 of innocence? He is entitled to be presumed innocent until  
16 he is proved guilty. Are you in a frame of mind right now,  
17 Mrs. Heinrich, at this moment, where you honestly presume  
18 him innocent?

19 A. I don't believe I've heard anything that would  
20 indicate he was. But, you know, you can't really try a person  
21 until you've heard the whole story.

22 Q. You haven't heard anything that would indicate  
23 that he wasn't; is that correct?

24 A. No, I haven't.

25 Q. That he is innocent? Have you heard anything that

1 would indicate that he is guilty?

2 A. Yes.

3 Q. Well, the real question is whether, in spite of  
4 that, Mrs. Heinrich, you can honor the presumption. Now, we  
5 assume that you would try to.

6 A. That's right.

7 Q. The Judge would ask you to. It would be part of  
8 your duty as a juror to do it. But, we're all human and the  
9 question is, could you do it?

10 The question comes to this point. Would it require  
11 some showing, some explanation, some showing in Mr. Creech's  
12 behalf before you would be satisfied that he is innocent?

13 A. Yes.

14 Q. And in the absence of such a showing, your  
15 inclination is to feel that he is probably guilty; is that  
16 a fair statement?

17 A. I think that's fair.

18 MR. HOWER: I will challenge for cause, Your Honor.

19 MR. REMAKLUS: I wouldn't resist the challenge.

20 THE COURT: Perhaps -- I would like to ask a couple  
21 more questions of Mrs. Heinrich about this. It's a fairly  
22 difficult matter.

23 Counsel referred to some instructions I would  
24 give you about the presumption of innocence.

25 As the defendant sits here today he is presumed

1 innocent under the law and that presumption stays with him  
2 throughout the trial until and unless the State has proved  
3 him guilty beyond a reasonable doubt. Now, that's what the  
4 law is.

5 I appreciate what we're talking about now is a  
6 difference between what the law says and our human ability to  
7 apply that. Of course, that's the difficult area. I'm sure  
8 you've indicated you would try to follow that instruction to  
9 your best human ability. But, you are the only one that can  
10 examine, I guess, your own mind and tell us whether it would  
11 really be possible for you to do that with what you know about  
12 the case.

13 Another instruction that Counsel haven't mentioned  
14 that I should mention to you too so we can fully test your  
15 ability to comply with these, there is another instruction  
16 under another principle that goes right along with the  
17 presumption of innocence and that principle is that the  
18 defendant does not have to take the stand and testify and to  
19 give any evidence unless he wants to. For any reason that  
20 his counsel suggests to him or that he might feel himself and  
21 he doesn't have to testify and a juror would not be, under  
22 law, to be permitted to consider that, or discuss why he  
23 didn't testify or why he didn't take the stand.

24 You have to couple that principle of law with the  
25 principle of the presumption of innocence. Now, knowing --



1 coupling those two principles of law together, would it, in  
2 your own mind, knowing how you feel, would it still take some  
3 evidence to set aside your present impressions about him if  
4 he didn't say anything?

5 THE WITNESS: Would be -- I mean, I don't have any  
6 facts. I'd have to have some facts one way or the other.

7 THE COURT: You see, that is what the law says. The  
8 law says, as he sits here today he's innocent and if nobody  
9 presents any facts he goes free. See, he's completely  
10 innocent and it means he doesn't have to present anything and  
11 if the State doesn't present enough to overcome that  
12 presumption then he's innocent. The test is whether --

13 THE WITNESS: Then, you'd have to go by that.

14 THE COURT: -- whether, within your human ability, you  
15 can apply those principles; knowing what you know about the  
16 case, you see?

17 THE WITNESS: Yes, I think I could -- you mean, could I  
18 put that out of my mind and go by just what happened in the  
19 courtroom?

20 THE COURT: Yes, what you heard here.

21 THE WITNESS: I'm -- I've been a loner for a long time,  
22 I'm sure I could do that.

23 THE COURT: Now, knowing what you didn't know when you  
24 answered Mr. Hower's last question, really no obligation on  
25 the defendant to present anything to establish his innocence,

1 the law gives him that innocent presumption and he doesn't  
2 have to overcome that.

3 Now, knowing that, do you feel you could set  
4 aside any present feelings you have and apply -- then decide  
5 the case strictly on the evidence that's admitted here in  
6 court, not require him to prove anything concerning his  
7 innocence?

8 THE WITNESS: I think I could.

9 THE COURT: I guess what I'm saying, it's hard to  
10 explain, Mrs. Heinrich.

11 THE WITNESS: Disregard anything that you've heard or  
12 read or feel and do just --

13 THE COURT: Let's just assume that when the State  
14 presents all its evidence, the defendant doesn't present  
15 a thing, he doesn't take the stand, he doesn't present any  
16 evidence and you really had a reasonable doubt in your mind  
17 whether, under the State's evidence, that you have heard here  
18 in open court, proved him guilty; could you then apply this  
19 presumption and find him not guilty?

20 If he just remained silent, didn't say a word and  
21 you really had a doubt just listening to what the State  
22 presented here, could you then find him not guilty?

23 THE WITNESS: I think so.

24 THE COURT: You want to ask some more questions?

25 MR. HOWER: No, Your Honor, I'll withdraw the challenge.

1 THE COURT: All right, you can proceed, then.

2 MR. REMAKLUS: Thank you, Your Honor.

3  
4 FURTHER VOIR DIRE EXAMINATION

5 BY MR. REMAKLUS:

6 Q There are some additional questions, Mrs. Heinrich,  
7 that Mr. Hower and I both have. I don't think it will take  
8 us very long.

9 How long were you a teacher?

10 A Twenty years.

11 Q And what did you teach? Grade school or high  
12 school?

13 A Grade school.

14 Q What areas -- I mean, what grades did you teach?

15 A When I first came to Long Valley, all eight  
16 grades. Then, the last ten years have been the second grade.

17 Q And Mr. Heinrich, did he farm for several years  
18 before you went to work in the school district?

19 A Until the last ten years.

20 Q Um-hmm. I see all the kids are grown up and gone  
21 from home?

22 A Um-hmm.

23 Q If you are selected as a trial juror, I'm assuming  
24 you wouldn't have any great difficulty then in making  
25 preparations to be away from home for a few nights?

1           A.     If it was only a few nights, yeah, I don't think  
2 so, probably.

3           Q.     Now, in view of your extensive experience with  
4 young people and teaching, particularly since you are a  
5 teacher, Mrs. Heinrich, have you ever given any consideration  
6 to the death penalty?

7           A.     Yes.

8           Q.     And you arrived at any conclusions about it?

9           A.     I don't believe in it.

10          Q.     Now, Mrs. Heinrich, is this a fixed opinion that  
11 you have regarding the death penalty?

12          A.     Yes, it is.

13          Q.     Do you feel that this is a very deep abiding  
14 conviction that you have in opposition to the death penalty?

15          A.     Yes.

16          Q.     Mrs. Heinrich, then, if the death -- or if the  
17 State met the high burden that's on the State in a criminal  
18 case and proved beyond a reasonable doubt that the defendant  
19 was guilty, would your deep conviction in opposition to the  
20 death penalty prevent you from arriving at a verdict based on  
21 the evidence?

22          A.     No, I think there's other forms of punishment than  
23 a death penalty.

24          Q.     And if that were the only form of punishment in  
25 this case, would it interfere with your decision?

1 A. I'm afraid it would.

2 MR. HOWER: I think the question is improper,  
3 Your Honor.

4 THE COURT: It's a proper question, he hasn't  
5 challenged her.

6 MR. HOWER: I know --

7 THE COURT: It may not be sufficient grounds for  
8 challenge, but it is a proper question.

9 MR. HOWER: All right.

10 Q. BY MR. REMAKLUS: This is a difficult question  
11 to ask, Mrs. Heinrich, because it's a subject I know that  
12 troubles me and I know that's troubled you in arriving at  
13 your decision because of the very nature of it.

14 I think what I want to ask you simply is this:  
15 Is, whether or not your frame of mind regarding that penalty  
16 is so deep and abiding within you that it would, in fact,  
17 influence your judgment with reference to arriving at a  
18 decision in this case?

19 A. Could I reword that and ask you a question?  
20 Do you mean, then, if that were the only --

21 Q. Yes.

22 A. -- if that was the only alternative, that there  
23 was only --

24 Q. Yes.

25 A. -- one punishment for being guilty?

1 Q Yes.

2 A I'm afraid it would. I don't believe in the death  
3 penalty.

4 MR. REMAKLUS: I would challenge the juror for cause,  
5 Your Honor.

6 THE COURT: Do you want to take exception?

7 MR. HOWER: Yes, I do, and I'd like to ask questions.

8 THE COURT: You can go ahead and question.

9

10 FURTHER VOIR DIRE EXAMINATION

11 BY MR. HOWER:

12 Q Mrs. Heinrich, would your answer be the same assuming  
13 that you are instructed by the Judge that the manner of  
14 punishment is for the Court or for the legislature but not for  
15 the jurors; that the responsibility of the juror in every  
16 criminal case is limited to the decision as to whether, under  
17 the facts presented in court, the law stated by the Court, the  
18 defendant is guilty or innocent of the offense charged; that's  
19 -- that limits. If you are instructed that that limits the  
20 function of the jury, guilt or innocence; that the punishment,  
21 whatever it may be, whatever terms and conditions is a matter  
22 fixed by the legislature for the Court and is not the  
23 responsibility of the jury. Would that affect your answer to  
24 the previous question; assuming that instruction from the Judge,  
25 could you then fulfill your function --

1 A. Yes.

2 Q -- as a juror?

3 A. Yes, I think so.

4 Q Which is to pronounce -- which is to vote as one  
5 person the jury to pronounce this person guilty or innocent as  
6 charged, could you do that?

7 A. Yes.

8 MR. HOWER: I take exception to the challenge, Your Honor.

9 MR. REMAKLUS: May I ask a question now in aid of  
10 clarification?

11 THE COURT: Well, I'd like to ask a couple of questions  
12 and then I'll let you.

13 MR. REMAKLUS: Yes, sir.

14 THE COURT: Mrs. Heinrich, again we're in an area where  
15 it's not too difficult to tell you what the law is but, again,  
16 it deals with your conscience and your human ability in  
17 applying that law and what Counsel have explained the law to  
18 you is accurate as far as they have gone.

19 In this particular case it will be appropriate and  
20 you will be instructed that the actual penalty is not a  
21 consideration of the jury, but your only function is to find the  
22 defendant guilty or innocent of the crime charged and any  
23 included offenses that you might be instructed on; other  
24 offenses that might be included in the charge. That will be the  
25 instruction as Mr. Hower gave to you.

1           Now, I think you should know, and it's been implied  
2 here and I don't see how the question can be asked, put to you  
3 properly without you knowing. The legislature has already  
4 provided that if a person is convicted of first degree murder  
5 the death penalty must be imposed. That isn't up to me to  
6 decide or you to decide; the legislature has made that decision.

7           THE WITNESS: In other words, if I would vote that he  
8 was guilty then the death penalty would be the result?

9           THE COURT: Not because you vote for the death penalty.

10          THE WITNESS: They've already set the law.

11          THE COURT: The legislature has already fixed that  
12 penalty.

13          THE WITNESS: Then that would make a difference.

14          THE COURT: You understand that, what I said?

15                 Now, what I'm asking you, would your -- this is the  
16 \$64 question. Would your feeling about the death penalty and  
17 your objection to the death penalty just absolutely prevent  
18 you from finding the defendant guilty of first degree murder  
19 under any state of the evidence?

20                 In other words, no matter how strong a case the  
21 State put on to prove first degree murder, would your feeling  
22 against the death penalty preclude you from finding him guilty  
23 because of what the legislature has fixed as a penalty?

24                 Now, knowing that, you wouldn't be voting on the  
25 penalty but it would be automatic now because of what the



1 legislature has done?

2 THE WITNESS: That's a hard question.

3 THE COURT: Yes, it is.

4 THE WITNESS: No, I don't really know. I don't --

5 THE COURT: I can't make it any easier for you. You are  
6 the only one that can search your conscience.

7 THE WITNESS: If I could be objective enough to  
8 consider one thing at a time without the result, you know, if  
9 I could consider in court what was taking place there and  
10 answer that without thinking about the result -- it's just  
11 simply could you, if the evidence was there, beyond a reasonable  
12 doubt, could you vote for guilty of first degree knowing what  
13 the legislature has provided as the penalty. I don't believe  
14 I could.

15 THE COURT: Okay.

16 MR. REMAKLUS: I renew my challenge.

17 THE COURT: Unless you want to pursue it further, I'd  
18 have to grant the challenge. I would let you ask further,  
19 Mr. Hower, or hear any argument. I want --

20 MR. HOWER: No, I would -- just as a courtesy to the  
21 Court, I would serve notice at this time that I intend to  
22 request an instruction to the jury that the death penalty is  
23 mandatory on conviction. That's a matter that will have to be  
24 briefed later on, but I believe it has to follow from the  
25 Court's comments with this prospective juror.

1 THE COURT: Well, I think the jurors have to know that  
2 to answer the questions on the death penalty whether I tell  
3 them in instructions or whether you tell them on the voir dire.  
4 I don't know which is more appropriate.

5 MR. HOWER: I take exception to the challenge, Your Honor.

6 THE COURT: Well, I'm going to grant the challenge.

7 We appreciate your honesty and frankness,  
8 Mrs. Heinrich.

9 We'll excuse you. You'll have to report again on  
10 June 5th at 10:00 for another trial if you will remember that,  
11 please.

12 THE CLERK: Richard Wheeler.

13  
14 RICHARD O. WHEELER,  
15 a prospective juror herein, having been first duly sworn, took  
16 the stand and testified as follows:

17  
18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q Mr. Wheeler, in the jury selection in this  
21 particular case it's been divided into -- kind of divided into  
22 two parts. The first questions that we would like to ask you  
23 concern only with pretrial publicity; including TV broadcasts,  
24 newspaper articles, conversations that you may have overheard  
25 or participated in and, as much as possible, we're going to

1 limit the questions to that area.

2 Now, have you followed this in the local or in the  
3 daily paper?

4 A. Not with any, oh, degree of, you know, I've read a  
5 few articles but I haven't followed the case, no.

6 Q. You've never made it a point to look for the  
7 Creech case in the newspapers, then --

8 A. No.

9 Q. -- is that right, Mr. Wheeler?

10 How about television? I suppose you, like the rest  
11 of us, check the evening news?

12 A. Yes, and I've read -- or listened to the evening  
13 news, perhaps not as consistently as some because I'm not  
14 always home for the evening news.

15 Q. Does your shift down at the mill you're working at --

16 A. No.

17 Q. You work for Federal Aviation, that's right.

18 A. Yes.

19 Q. Your shifts are such that they, when you are up on  
20 the mountain at the station, there's nothing like that  
21 available; isn't that right?

22 A. No, not in my work there isn't.

23 Q. Um-hmm. Mr. Wheeler, on your -- yeah, you have  
24 been on a jury. Has that been recently?

25 A. I can't recall for sure, but I think it was in,

1       either '70 or '71, I think, I'm not for sure.

2               Q     Um-hmm. That's quite a ways to think back about  
3       an instance, but, then as now in this case if you are selected  
4       as a juror the Judge is going to give you the law of the case,  
5       he's going to read the instructions and you are going to be  
6       bound by those instructions as being the law in this case.

7               Now, do you follow what I mean here in this  
8       particular aspect?

9               A     Yes.

10              Q     Now, even though you might personally disagree  
11       with them, nevertheless you are bound to take the Judge's  
12       instructions as being the law.

13              A     Right.

14              Q     Now, in the event that the Judge instructs you,  
15       which I'm sure he will, that you'd have to base your verdict  
16       on the evidence that you would see and hear right here in this  
17       courtroom, could you give the defendant a fair and impartial  
18       trial?

19              A     I think I could.

20              Q     You don't feel that whatever you might have heard  
21       or read is going to leave you with any impressions one way or  
22       another?

23              A     No, I don't think so.

24              Q     Of course, I know that your employment takes you  
25       out of town and it's -- you are gone for a few days and, then,

1 home for a few days and that you haven't had, frequently, the  
2 exposure that, maybe, somebody else may have had to this  
3 pretrial publicity.

4 MR. REMAKLUS: I'm going to pass the juror for cause,  
5 Your Honor.

6  
7 VOIR DIRE EXAMINATION

8 BY MR. HOWER:

9 Q Mr. Wheeler, do you subscribe in your home to the  
10 Idaho Daily Statesman?

11 A Yes, we do.

12 Q Generally speaking, do you read it pretty  
13 carefully?

14 A Depending on how much time I have. At times I do  
15 read it quite closely and other times no. I just read the  
16 headlines.

17 Q How about your wife? Does she read it pretty  
18 carefully?

19 A No, she doesn't either. She's -- well, she just  
20 doesn't take much interest in reading the papers.

21 Q Do you recall having read in the Statesman, or do  
22 you recall having heard any conversation about a trip to  
23 the State of California that Mr. Creech was taken on a few  
24 weeks ago?

25 A I recall reading in the paper, yes, that he was

1 taken to California once.

2 Q Do you recall the purpose of the trip as reported  
3 in the paper?

4 A As reported in the paper, yes.

5 Q What was the purpose?

6 A It seems that -- let's see if I can recall  
7 correctly. The paper stated that they had taken him to  
8 California to locate some supposed bodies or something of this  
9 sort.

10 Q Do you have any memory from the story, Mr. Wheeler,  
11 as to why this was done?

12 A No, I don't remember why.

13 Q Do you make any presumptions as to why it was done?

14 A I suppose I could make a presumption, yes, as to  
15 why.

16 Q Actually, you have a pretty strong notion; don't  
17 you, as to why he was taken to California in connection with  
18 some dead bodies?

19 A Well, it would be my assumption that somebody  
20 thought he knew something about them. But, whether he did or  
21 didn't, I have no way of knowing.

22 Q You have no way of knowing for certain, but we  
23 have to be concerned with the idea implated in your head when  
24 we read something like that.

25 Do you feel that there is an idea that's there that

1 needs to be overcome before you start with a clean slate so far  
2 as Mr. Creech is concerned?

3 A. I don't really think I have any strong preformed  
4 ideas as of why because I don't know the circumstances  
5 concerning why.

6 Q. Have you participated, Mr. Wheeler, in any  
7 conversations touching upon the question of whether Mr. Creech  
8 is or is not probably guilty of the offenses charged with  
9 here in Valley County?

10 A. I don't definitely recall that I've ever had any  
11 conversations as to whether he was actually guilty or not. I  
12 can't honestly say that I have.

13 Q. Can you honestly say --

14 A. Or say I haven't either, let's put it that way.

15 Q. Can you honestly say whether or not you have,  
16 yourself, ever expressed an opinion as to whether or not  
17 Mr. Creech is probably guilty?

18 A. No, I can't say that I have expressed any opinion  
19 as to whether he was guilty or not.

20 Q. Can you say that you have not?

21 A. No, I can't say that I have not either.

22 Q. Then, we're left with the possibility, which you  
23 cannot clear up, that you may have expressed such an opinion  
24 but you don't know for sure?

25 A. That's right.

1 Q Well, Mr. Wheeler, as of this minute, do you have  
2 an opinion as to whether Mr. Creech is probably guilty or not?

3 A No, I don't have any opinion. I would have to,  
4 you know, know the circumstances, know better before I would  
5 form any strong opinion on it or opinion at all as far as  
6 that's concerned.

7 MR. HOWER: I'll pass for cause, on this issue,  
8 Your Honor.

9 MR. REMAKLUS: That was merely on the pretrial  
10 publicity?

11 THE COURT: Yes.

12 MR. REMAKLUS: Thank you, Your Honor.

13  
14 FURTHER VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16 Q Mr. Wheeler, the attorney-client relationship  
17 does not exist between you and I, does it?

18 A I'm sorry, I didn't hear you.

19 Q I'm not doing any legal work for you or Mrs. Wheeler?  
20 No attorney-client relationship between you and me?

21 A No, no, sir.

22 Q Is there any attorney-client relationship between  
23 you and Mr. Hower?

24 A No, there is not.

25 Q I'm sure that you know both of us at least



1 casually or to say hello to.

2 A. Yes, I know who you both are. We met.

3 Q. And that's, really, the extent of the acquaintanceship  
4 isn't it?

5 A. That's right.

6 Q. Do you have any feeling or any -- given  
7 consideration to the death penalty, Mr. Wheeler?

8 A. I think that the death penalty should be used in  
9 certain circumstances.

10 Q. You understand that whether or not the death  
11 penalty is pronounced here in a case like this is up to the  
12 legislature and they have fixed it and it wouldn't be up to  
13 you or to me to fix the penalty.

14 A. Yes, I didn't even know for sure whether it was  
15 on the books yet in the State of Idaho or not.

16 Q. Would the fact that there is a mandatory death  
17 penalty in a case like this, would this affect your judgment  
18 in arriving at a decision?

19 A. I don't believe so, no.

20 Q. What I'm asking is, if you could just base your  
21 opinion on the evidence that you would see right here in the  
22 courtroom and be guided solely by that.

23 A. I believe I could, yes.

24 MR. REMAKLUS: We'll pass the juror for cause,  
25 Your Honor.

1 MR. HOWER: Pass for cause, Your Honor.

2 THE COURT: Mr. Wheeler, we'll ask you to return to the  
3 Hall over there and remain there but I would ask you not to  
4 discuss the case, what anybody questioned you about here with  
5 the other jurors.

6 THE WITNESS: All right, sir.

7 THE COURT: We'll take a ten-minute recess.

8 (Recess taken.)

9 THE COURT: Back on the record.

10 State's sixth preemptory.

11 MR. REMAKLUS: Yes, Your Honor.

12 THE CLERK: Robert Farnsworth.

13

14

15 ROBERT FARNSWORTH,  
16 a prospective juror herein, having been first duly sworn, took  
17 the stand and testified as follows:

18

19 VOIR DIRE EXAMINATION

20 BY MR. REMAKLUS:

21 Q Mr. Farnsworth, in the first part of the process  
22 of jury selection we want to ask you some questions with  
23 reference to pretrial publicity; particularly with reference  
24 to newspaper articles or television broadcasts, conversations  
25 that you may have overheard or, you know, participated in.

Have you followed this case in the papers?

1 A. No, I haven't.

2 Q And how about the television, Mr. Farnsworth?

3 A I can remember of one instance on television and  
4 something was referenced to Mr. Creech was supposed to be on  
5 television or something and they denied it and that was about  
6 the extent of it.

7 Q Have you had -- do you recall of reading any  
8 articles in the paper about this?

9 A I think the first article I read was probably  
10 last Friday. I've only been taking the Sunday newspaper and,  
11 as a result, my access to it would be fairly --

12 Q Now, have you lived up here in Valley County for  
13 any length of time, Mr. Farnsworth?

14 A This is my fifth year.

15 Q Um-hmm. Now, as a building contractor your  
16 business takes you out among the public, I assume?

17 A Not a great deal, but some, yes. Although I spent  
18 nine months on the Main Salmon River last year and, as a  
19 result, I was out of contact.

20 Q Sure. Have you overheard conversations of other  
21 people where opinions, or where this matter has been discussed?

22 A Quite frankly, I haven't.

23 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

24 MR. HOWER: I'll pass for cause, Your Honor.

25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mr. Farnsworth, we're going to ask you a few more  
4 questions to get into a little bit broader scope here now that  
5 we've talked about the pretrial publicity.

6 What I'm looking at here, the jury qualification  
7 form that you turned in and you list your occupation as  
8 building contractor. What kind of work do you specialize in?  
9 Any kind of contracting work?

10 A General building.

11 Q What does it consist of? Residential construction?

12 A Primarily, yes, and has been some commercial work  
13 but not a great deal.

14 Q And you and your family have been there at  
15 McCall for five years?

16 A Yes.

17 Q Where did you live prior to that?

18 A Boise.

19 Q Were you in the same business down there,  
20 Mr. Farnsworth?

21 A I was down there. I was a cabinet maker primarily  
22 for -- that is, just before I came to Valley County, but I was  
23 a carpenter.

24 Q Um-hmm. So, have you pretty much followed the  
25 carpentry and building trades all of your life?

1 A. Mostly, yes.

2 Q. Where did you live -- or where did you grow up,

3 Mr. Farnsworth?

4 A. Born and raised in Cheyenne. I moved from

5 Cheyenne to Ogden, Utah and from there to Boise.

6 Q. You've been here in Ada and Valley Counties, then,

7 for the last ten years?

8 A. Yes, um-hmm.

9 Q. And where is Mrs. Farnsworth from?

10 A. Florida.

11 Q. Were you in the Service, Mr. Farnsworth?

12 A. Yes.

13 Q. See here you are a family man and have you given

14 any consideration to the death penalty, Mr. Farnsworth?

15 A. Oh, in what respect do you mean?

16 Q. Have you thought about it?

17 A. Am I in favor of it or against it or what?

18 I haven't thought about it one way or the other,

19 let's put it that way, then.

20 Q. Fine.

21 A. Possibly times when I've favored it and other

22 times I haven't.

23 Q. You really feel that you have an open mind on

24 that particular subject?

25 A. I think I do, yes.

1 Q So, then, you have no religious convictions one way  
2 or another with reference to that?

3 A No.

4 Q Um-hmm. Now, have you been on a jury any place  
5 before?

6 A No, I have not.

7 Q If you are accepted here as a trial juror,  
8 Mr. Farnsworth, the Judge is going to give you the -- in his  
9 instructions, and he will give you the law of the case and he  
10 will tell you in those instructions what the law is as applies  
11 to this case. Do you understand what I mean?

12 A Yes.

13 Q Now, if he instructs you too that you would -- must  
14 base your decision only upon the evidence that you see and hear  
15 right here in the courtroom, then, in view of your lack of  
16 exposure to the news media and so on, you would have no  
17 difficulty in following that instruction, would you?

18 A No, I'd -- compelled to, yes, sir.

19 Q You have no reservations, then, at all, about  
20 following instructions, do you? All we're trying to do here  
21 is find 12 people that have an open mind that will render a  
22 fair and impartial verdict in this case.

23 Would you consider yourself in a position to render  
24 a fair and impartial verdict in this case?

25 A I believe so.

1 Q Would the fact that capital punishment is involved  
2 in this case, would that in any way interfere with your  
3 arriving at your decision based upon the evidence here in the  
4 courtroom?

5 A I don't think so.

6 MR. REMAKLUS: We'll pass the juror for cause.

7 MR. HOWER: Pass for cause, Your Honor.

8 THE COURT: Mr. Farnsworth, we'll ask you to go back to  
9 the American Legion Hall and wait there. I would ask you not  
10 to discuss with the other jurors the questions that have been  
11 asked you here and not discuss it with them.

12 THE WITNESS: Yes, Your Honor.

13 THE CLERK: James Madden.

14

15 JAMES E. MADDEN,

16 a prospective juror herein, having been first duly sworn, took  
17 the stand and testified as follows:

18

19 VOIR DIRE EXAMINATION

20 BY MR. REMAKLUS:

21 Q Mr. Madden, in the first part of the examination,  
22 or questions that we're going to address to you, we're going to  
23 confine our questions as closely as possible to matters  
24 concerning pretrial publicity. I'm having reference to  
25 newspaper articles, television broadcasts, conversations that

1 you may have overheard or participated in.

2 Have you followed this case in the papers?

3 A. Just what I read in the papers, yes.

4 Q. And have you seen it on TV on the news and so on?

5 A. Yes, I watched it on television when it was  
6 happening.

7 Q. Now, are you -- would you be working now if you  
8 weren't down here today?

9 A. Yes.

10 Q. Has there been conversations out on the job with  
11 reference to this matter?

12 A. I've only been back to work for about two weeks and  
13 wasn't nothing, pretty well forgot about now.

14 Q. Um-hmm. How recently have you read newspaper  
15 accounts of this?

16 A. Oh, I read the article about the trial coming up  
17 was the last one I read.

18 Q. And I notice here that you've never been on a jury  
19 before?

20 A. No, sir.

21 Q. The Judge, if you are received here as a juror,  
22 the Judge will give you instructions as to what the law is and,  
23 of course, you'd have to follow those in this case and be  
24 guided by them.

25 Now, if the Judge instructs you that you can only



1 base your decision on evidence that you see and hear right here  
2 in the courtroom, could you exclude the newspaper articles and  
3 things like that sufficiently to render a fair and impartial  
4 verdict based just on the evidence here in the courtroom?

5 A. I imagine I could. It would be just pretty well  
6 set in my mind what I've read and stuff, all I can go by now,  
7 but --

8 Q. You think, Mr. Madden, in reading newspaper  
9 articles, do you get the impression that the people who write  
10 those articles know the facts or are they just reporting  
11 general news items?

12 A. I guess I just believe what I read, more or less.

13 Q. Do you think these articles have given you an  
14 opinion in this matter?

15 A. I do myself in my own mind.

16 Q. Do you think your opinion is such it would take  
17 evidence to change it?

18 A. I believe it would take.

19 Q. In view of your frame of mind, do you think that  
20 you could be fair and impartial, then, to Mr. Creech and limit  
21 your decision just on what you see and hear right here in the  
22 courtroom?

23 A. I believe I could but I wouldn't say for sure. I  
24 believe I could.

25 Q. I'm sure you would try to, Mr. Madden, and, of

1 course, what we're looking for here is 12 people who have an  
2 open mind in this and can give a fair and impartial verdict and  
3 if you think you can, I would certainly like for you to tell  
4 me so.

5 A. Well, it's like you seeing, I believe, what you  
6 read in the paper mostly but I believe if it was come right  
7 down to it I could probably render a fair decision if the  
8 evidence was put before me.

9 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

10  
11 VOIR DIRE EXAMINATION

12 BY MR. HOWER:

13 Q. Mr. Madden, I have some difficulties with your  
14 answers because, at one time, you said you had your mind  
15 pretty well made up.

16 A. Well, what you read in the newspaper.

17 Q. As of this moment you have your mind pretty well  
18 made up?

19 A. I did, yes, but I've not seen any evidence or  
20 anything.

21 Q. But what ---

22 A. I haven't seen any of the evidence, just be what  
23 I read in the papers.

24 Q. Well, you did see stories in the papers?

25 A. Yes.

1 Q Generally speaking, do you believe that what  
2 you've read in the paper is true?

3 A I believe about what I read, I just take people at  
4 what they read, I guess.

5 MR. HOWER: Yes. Challenge for cause, Your Honor.

6 MR. REMAKLUS: Your Honor, I'll resist the challenge,  
7 at least at this point until we have some further clarification  
8 of the witness's frame of mind.

9 THE COURT: You want to examine further?

10 MR. REMAKLUS: Yes, if I may.

11  
12 FURTHER VOIR DIRE EXAMINATION

13 BY MR. REMAKLUS:

14 Q I know that you qualify your opinion and you are  
15 being absolutely open with us and that's why you are here and  
16 why we're asking these questions. You stated to me that you  
17 would follow the Judge's --

18 A Yes, sir.

19 Q -- instructions? And if he instructs you to limit  
20 -- to limit your decision to the evidence that would be  
21 produced here, you are going to make every effort to do just  
22 that; are you not, Mr. Madden?

23 A Yes, sir.

24 Q If the Judge instructs you that the defendant is  
25 presumed to be innocent until proven guilty beyond a reasonable

1 doubt, will you give him the benefit of that presumption?

2 A. Yes, sir, that's the way I believe.

3 Q. You believe that -- you believe in that principle  
4 of law; do you not?

5 A. Yes, I do.

6 Q. On the other hand, if you are satisfied that the  
7 State does prove the commission of the offenses beyond a  
8 reasonable doubt, that you can render a decision based on that  
9 also?

10 A. If the evidence was before me I believe I could.

11 MR. REMAKLUS: I still pass for cause, Your Honor.  
12 Thank you.

13 THE COURT: You want to pursue it any more?

14 MR. HOWER: No, I challenge for cause, Your Honor.

15 THE COURT: Let me ask you a few questions, Mr. Madden.

16 You said a few times that you followed in the  
17 papers and generally tend to believe what you have read in the  
18 papers.

19 It would help me a little if I knew some of the  
20 specifics that you remember reading in the paper that has  
21 caused you to have whatever impression, or opinion, you have.

22 Now, do you remember any of the details, at least  
23 any that you've read that's caused you to have any opinion?

24 THE WITNESS: Just what I read in the paper about the  
25 added -- or he did admit that different bodies and stuff

1 throughout the States; or that they wrote about this in the  
2 paper.

3 THE COURT: In other states, you mean?

4 THE WITNESS: Yes.

5 THE COURT: Is that the one thing that stands out most  
6 in your mind?

7 THE WITNESS: Yes, and then, about the girl, the  
8 accomplice that was with him. The article about her in the  
9 paper.

10 THE COURT: About, perhaps, something she had said?

11 THE WITNESS: Yes.

12 THE COURT: Anything else you remember specifically?

13 THE WITNESS: No, not right offhand.

14 THE COURT: Counsel have referred to some principles  
15 of law here that are pretty important in our system of justice,  
16 Mr. Madden, and the principles in themselves are pretty easy  
17 to state. But, our mind is a complicated thing and the  
18 difficulty I'm sure you have and we have as answering  
19 questions about whether we can make our minds -- have enough  
20 control over our minds to comply with these principles of law  
21 and have heard things about things like this --

22 THE WITNESS: Yes, it is.

23 THE COURT: -- have to be removed and set aside.

24 Now, under the principles that have already been  
25 referred to, the defendant, as he sits here today, is presumed

1 to be innocent, that's a principle of law that jurors are  
2 supposed to apply and we instruct you on it.

3 It's also a principle of law that the defendant  
4 doesn't have to do anything to prove he's innocent. The law  
5 gives him that cloak of innocence right now as he sits here.  
6 But what that really means in a practical fact is that, after  
7 the State has presented all its evidence, if you would still  
8 entertain the reasonable doubt whether just based on the  
9 evidence you've heard here in court, nothing else, nothing you  
10 read in the paper, just what you heard in the court, means  
11 that after the State has finished its proof, if you would still  
12 have a reasonable doubt based on just what they presented, you  
13 would have to find him not guilty; even though he didn't say  
14 a word, didn't present any evidence to prove his innocence,  
15 didn't do a thing. That principle of law means you'd have to  
16 find him not guilty.

17 THE WITNESS: Yes.

18 THE COURT: Now, do you think you could do that if he  
19 didn't say a word in his own defense?

20 THE WITNESS: I believe truthfully I couldn't, sir.

21 THE COURT: All right, we appreciate very much your  
22 frankness, Mr. Madden.

23 We'll excuse you, then. Thank you for your  
24 honesty.

25 You will have to report again on June 5th at

1 10:00 for another jury trial.

2 THE CLERK: Jo Anne Cole.

3  
4 JO ANNE COLE,  
5 a prospective juror herein, having been first duly sworn, took  
6 the stand and testified as follows:  
7

8 VOIR DIRE EXAMINATION

9 BY MR. REMAKLUS:

10 Q Mrs. Cole, the first part of the questions that  
11 we're going to ask you are going to be confined, as closely as  
12 possible, to matters concerning pretrial publicity; that is,  
13 newspaper articles, television broadcasts, radio and news  
14 broadcasts and things of that nature.

15 May I ask you if you have followed this -- this  
16 case in the newspaper?

17 A Yes, sir.

18 Q And have you seen it on television?

19 A Um-hmm.

20 Q Have you?

21 A Yes.

22 Q Now, of course, I know that you sold the  
23 restaurant here some time ago, you just work part time now; is  
24 that it, Mrs. Cole?

25 A Yes.

1 Q Have you engaged in any conversations down there  
2 that concern this matter?  
3 A Yes.  
4 Q Have people in your presence, have they expressed  
5 opinions as to guilt or innocence?  
6 A Yes.  
7 Q And have you had occasion to participate, yourself,  
8 in any of those conversations?  
9 A Yes.  
10 Q Do you think -- well, first, how recently have you  
11 followed this in the papers?  
12 A Yesterday morning's paper.  
13 Q Um-hmm. And you folks subscribe to the daily  
14 paper, do you?  
15 A Statesman, um-hmm.  
16 Q And do you think you customarily read the paper  
17 every day, don't you, Mrs. Cole?  
18 A Yes.  
19 Q You probably read most of the articles in -- that  
20 have appeared; haven't you?  
21 A Yes.  
22 Q Have these articles given you any preconceived  
23 ideas of guilt or innocence?  
24 A Yes.  
25 Q Do you think this is the type of opinion you are --



1 you have formed an opinion, then, at this time? I'm not  
2 going to ask you what it is, Mrs. Cole, but do you have an  
3 opinion at this time?

4 A. Yes.

5 Q. Would it take evidence here in the courtroom, one  
6 way or the other, to change your mind?

7 A. Yes.

8 MR. REMAKLUS: I'll ask that Mrs. Cole be excused for  
9 cause, Your Honor.

10 MR. HOWER: I will take exception to the challenge.  
11 May I question?

12 THE COURT: Yes.

13  
14 VOIR DIRE EXAMINATION

15 BY MR. HOWER:

16 Q. Mrs. Cole, you were asked if you had an opinion as  
17 to guilt or innocence and you answered that you had.

18 If you take into consideration the fact that  
19 guilt or innocence depends, not only about events what was  
20 done, but the reasons for them -- in other words, if you take  
21 into consideration the fact that all of the circumstances which  
22 might have justified the reasons, or which might bear on the  
23 motive have to be taken into consideration to determine guilt  
24 or innocence, would you still feel that you have a closed  
25 mind; that you've made up your mind on the question of guilt

1 or innocence as to this defendant?

2 A. It would have to be pretty strong evidence against  
3 my opinion, what I think.

4 Q Do you have an opinion -- you have an opinion as  
5 to the facts concerning motive?

6 A My own personal opinion, yes.

7 Q What's that opinion based on, Mrs. Cole?

8 A Hearsay.

9 Q Hearsay?

10 A Um-hmm.

11 Q If you were sworn as a juror in this cause, would  
12 you be unwilling to accord to this defendant the presumption  
13 that he is innocent in law until he is proved guilty?

14 A Would I be not willing?

15 Q Yes. I'll rephrase the question.

16 Would you be willing to accord him the presumption  
17 in law that he is innocent until he is proved guilty in law,  
18 in a court?

19 A Yes, I would be willing to.

20 Q And would you base your decision as to whether that  
21 presumption had been overcome as to whether he was, in fact,  
22 guilty? Would you be able to base that solely upon the  
23 evidence you heard in court and upon the instructions you  
24 received from the Judge as to the law?

25 A I'd try to.

1 or innocence as to this defendant?

2 A. It would have to be pretty strong evidence against  
3 my opinion, what I think.

4 Q. Do you have an opinion -- you have an opinion as  
5 to the facts concerning motive?

6 A. My own personal opinion, yes.

7 Q. What's that opinion based on, Mrs. Cole?

8 A. Hearsay.

9 Q. Hearsay?

10 A. Um-hmm.

11 Q. If you were sworn as a juror in this cause, would  
12 you be unwilling to accord to this defendant the presumption  
13 that he is innocent in law until he is proved guilty?

14 A. Would I be not willing?

15 Q. Yes. I'll rephrase the question.

16 Would you be willing to accord him the presumption  
17 in law that he is innocent until he is proved guilty in law,  
18 in a court?

19 A. Yes, I would be willing to.

20 Q. And would you base your decision as to whether that  
21 presumption had been overcome as to whether he was, in fact,  
22 guilty? Would you be able to base that solely upon the  
23 evidence you heard in court and upon the instructions you  
24 received from the Judge as to the law?

25 A. I'd try to.

1 Q We assume that you would try to. What we have to  
2 find out, if we can, is whether you think you could succeed in  
3 doing that.

4 A I don't think so, Ward.

5 MR. HOWER: I would withdraw my exception to the  
6 challenge.

7 THE COURT: Mrs. Cole, just for the record here, not  
8 trying to push anything further to embarrass you. I would like  
9 to know for the record what it is you've read or heard that's  
10 caused you to have the opinion you now have.

11 I'm thinking about specifics. You obviously read  
12 some things and I'm wondering just exactly what you remember  
13 in your own mind now that causes you to have this feeling.

14 I would like you to just tell me the details about  
15 what you remember about the articles that stand out in your  
16 mind right now.

17 THE WITNESS: Well, there are just a few things that --  
18 should I tell you what's bothering me?

19 THE COURT: Yes, um-hmm.

20 THE WITNESS: My husband ate lunch beside the car that  
21 was taken into custody. He works for the Highway Department  
22 and they were the ones that turned it in. He didn't turn it  
23 in, but he was there and I think this -- just everything that's  
24 happened.

25 THE COURT: That's something your husband told you? He

1 described the car to you?

2 THE WITNESS: Yes, he didn't get out and examine it, this  
3 was just what had happened and a friend of ours had almost  
4 picked up a couple the morning, or right after the car had been  
5 parked not too long, and I guess it's just overall, reading the  
6 papers.

7 THE COURT: What did you read now in the paper that has  
8 affected you that you remember?

9 THE WITNESS: Nothing specific other than that just the  
10 overall case.

11 THE COURT: There's nothing specific you read that's  
12 really sticking out in your mind; that's affecting your opinion?

13 THE WITNESS: No, sir.

14 THE COURT: We appreciate your frankness, Mrs. Cole.

15 MR. HOWER: May I make some slight additional record  
16 with this prospective juror?

17 THE COURT: Yes.

18

19 FURTHER VOIR DIRE EXAMINATION

20 BY MR. HOWER:

21 Q Mrs. Cole, does your husband have pretty strong  
22 feelings as to whether this defendant is guilty or innocent?

23 A. No, sir.

24 Q What?

25 A. No.

1 Q He does not?

2 A No, it was just brought to my attention that --

3 Q You mentioned the fact that he had lunch by the car.  
4 Is one of the reasons for your feelings and -- I thought maybe  
5 he had feelings too.

6 A I think because it was that close was why.

7 Q Would you be able to give an estimate of the number  
8 of people in Valley County with whom you have discussed this  
9 case since it first came up last November?

10 A Ward, I don't know. I've been at the restaurant  
11 and it's been mentioned a number of times in there.

12 Q Would you say as many as 50 total people involved  
13 in conversations with you about this case?

14 A Oh, about half of that, maybe.

15 Q Okay, about 25?

16 A Um-hmm.

17 Q And in the course of those conversations, did you  
18 express or indicate your own feelings as to the guilt or  
19 innocence of the defendant?

20 A Yes, sir.

21 MR. HOWER: Thank you. I have no further questions,  
22 Your Honor.

23 THE COURT: We do have another trial scheduled on  
24 June 5th at 10:00 right now, Mrs. Cole, and unless the Clerk  
25 calls you to tell you it's been cancelled, we'll ask you to

1 remember that date and come back again.

2 Thank you for your honesty. You may be excused.

3 THE CLERK: Welma Ingebretsen.

4

5 WELMA R. INGEBRETSEN,

6 a prospective juror herein, having been first duly sworn, took  
7 the stand and testified as follows:

8

9 VOIR DIRE EXAMINATION

10 BY MR. REMAKLUS:

11 Q Mrs. Ingebretsen, in selection of the jurors in this  
12 case, because of pretrial publicity, we've divided the  
13 questioning kind of into two parts and the first questions that  
14 will be asked of you are going to have to do with newspaper  
15 articles, television broadcasts or conversations that you may  
16 have heard or conversations that you may have taken part in with  
17 reference to this case and, as nearly as possible at this time,  
18 we're going to confine our questions to that area.

19 Now, have you had occasion to follow this case in  
20 the newspapers?

21 A I sure have.

22 Q And you and Mr. Ingebretsen take the daily paper;  
23 don't you?

24 A Take the Statesman and the Star, both.

25 Q And you folks are in the habit of reading the paper

1 each day; aren't you?

2 A. (No audible response.)

3 Q. In the normal course of your activities you probably

4 read all of the articles, haven't you, Mrs. Ingebretsen?

5 A. Well, I thought all that was presented, yes.

6 Q. And do you folks watch the TV news?

7 A. Sure.

8 Q. I'm -- I would suppose that you've seen this

9 discussed on the television news also?

10 A. Well, some, yes.

11 Q. And with reference to the newspaper articles, have

12 you read the recent ones, Sunday and Monday?

13 A. Yes.

14 Q. Do you remember what were in, say, -- oh, well, in

15 either one of those articles?

16 A. Oh, some of it.

17 Q. Would you tell me as much as you can remember out

18 of them, please.

19 A. Oh, how they were bringing in all the extra cops

20 up here and where -- for the protection of the courthouse and

21 people.

22 Q. Um-hmm. Did you read the paper yesterday morning

23 before you came down to court?

24 A. Yes.

25 Q. Do you remember what was in there yesterday?



1 A. Well, it was more or less a repeat of what was said  
2 before.

3 Q. And do you remember reading in there about an  
4 airplane crash?

5 A. Yes, over in Nevada?

6 Q. Yes, um-hmm.

7 A. Yes, I did.

8 Q. Do you recall reading where the -- that the defendant  
9 was in that airplane crash?

10 A. Yes, sir.

11 Q. Do you remember where it said that they had been?

12 A. You mean where they were going?

13 Q. Yeah, at that time. Just tell me what you can  
14 remember about the articles, Mrs. Ingebretsen.

15 A. Well, they were out hunting for some more graves out  
16 by that, oh, atomic site out there, that's what the papers in  
17 Las Vegas said.

18 Q. Were you down there at that time?

19 A. Yes, I was.

20 Q. Um-hmm. And when did you folks get home?

21 A. Be the 30th of April --

22 Q. Um-hmm.

23 A. -- to stay. We came up a week or so before and got  
24 our mail and, then, went back as far as Weiser.

25 Q. Um-hmm. You've been on your usual winter vacation,

1 then, is that right?

2 A. Yes.

3 Q. Do you have the paper saved for you when you are  
4 gone, Mrs. Ingebretsen?

5 A. A paper?

6 Q. Yes.

7 A. No, we don't. We cancel our --

8 Q. You cancel out there, but you take the papers if you  
9 go to Arizona or someplace, you take the papers down there,  
10 don't you?

11 A. Oh, yes.

12 Q. As a matter of fact, then, you probably have been  
13 in a position to keep yourself fairly well advised of the  
14 progress of this case, haven't you?

15 A. Well, there wasn't too much of it down there that  
16 you could read.

17 Q. Now, have you come to any conclusions about this  
18 matter? Formed an opinion as to guilt or innocence in this  
19 matter in view of your reading?

20 A. Yes.

21 Q. Do you think, Mrs. Ingebretsen, it would take  
22 evidence to change your mind at this point?

23 A. Well, it would have to be pretty strong evidence.

24 Q. You think he'd be in a position of having to prove  
25 that he was innocent?

1 A. I think so.

2 MR. REMAKLUS: I think, in view of Mrs. Ingebretsen's  
3 knowledge of this, Your Honor, we'd have to ask her to be  
4 excused.

5 THE COURT: Want to question her?

6 MR. HOWER: I take exception, Your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. HOWER:

10 Q Mrs. Ingebretsen, you've indicated that you have an  
11 opinion -- you've indicated that you have an opinion at the  
12 present time as to Mr. Creech's guilt or innocence.

13 If you were sworn as a juror in this case and if you  
14 were selected by the Court that your verdict must be based only  
15 on the evidence received in court and the instructions from the  
16 Judge as to the law of the case, do you believe you could make  
17 a decision based solely on that evidence and that law?

18 A. That would depend on how true the paper was and what  
19 it stated, I'd think.

20 Q Well, I guess my question means, could you separate  
21 in your mind when it came ready for you to decide whether this  
22 defendant was guilty or innocent; could you separate from your  
23 mind what you heard in court and what you read in the paper  
24 before you came into court and base your decision on the former  
25 -- base your decision only on what you heard in court?

1           A.     Well, I think I've read too much.

2           MR. HOWER: Thank you. I'll withdraw the exception,  
3 Your Honor.

4           THE COURT: We appreciate your frankness, Mrs. Ingebretsen.  
5 We'll excuse you from this trial, then, and we do have another  
6 one scheduled on June 5th at 10:00 that you'll have to report  
7 for. So, remember that date.

8           THE CLERK: Frank Smalley.

9  
10                               FRANK L. SMALLEY,  
11 a prospective juror herein, having been first duly sworn, took  
12 the stand and testified as follows:

13  
14                               VOIR DIRE EXAMINATION  
15 BY MR. REMAKLUS:

16           Q     Mr. Smalley, first part of the questioning in this  
17 matter is going to be concerned only with -- or confined as  
18 closely as we can to pretrial publicity; including newspaper  
19 articles, television, radio broadcasts or conversations that  
20 you may have heard or may have participated in.

21                       Now, have you followed this in the papers?

22           A.     Oh, yes, I have since the beginning, yeah.

23           Q     And you watch television?

24           A.     You bet.

25           Q     Probably picked it up on the news?

1 A. That's true, yes.

2 Q. And have you made any particular point to follow this  
3 case?

4 A. Well, I imagine just like everybody in the county  
5 where we're all interested in it. So, anything that I've seen  
6 or heard, why, made note of it.

7 Q. Because it was a local thing?

8 A. It was a local thing, yeah, sure.

9 Q. You think that what you've seen on the television  
10 or read in the newspapers would prevent you from being fair and  
11 impartial in this case?

12 A. Well, I don't really know how to answer that one.

13 Q. Well, maybe I could ask you something else. Have  
14 you been a juror before?

15 A. Oh, must have been about 15 years ago. I think it  
16 was on a civil case.

17 Q. Um-hmm. Well, you know, the Judge here -- probably  
18 the Judge in that case years ago read you the instructions.

19 A. Um-hmm.

20 Q. And in those instructions was the law.

21 A. Yeah.

22 Q. And part of your duty as a juror is to follow the  
23 instructions of the Judge.

24 A. That's right. That's right.

25 Q. And that's the law that applies to this case and

1 that will be given, too, the Judge here in this matter.

2 Okay, now, I'm sure in those instructions that the  
3 Judge is going to advise you that you must base your decision  
4 in this case on the evidence that you will see and hear right  
5 here in this courtroom and you are going to be bound to follow  
6 that.

7 Now, Mr. Smalley, do you feel that you can do that?

8 A. Oh, I imagine I could do that, yeah.

9 Q. Fine. You are familiar with the -- well, strike  
10 that.

11 All we're looking for, I'm sure you realize,  
12 Mr. Smalley, is 12 people who can give this defendant a fair and  
13 impartial trial.

14 A. That's right, I understand that.

15 Q. And you feel that you can do so?

16 A. Yeah, I feel that I could.

17 MR. REMAKLUS: Fine. I pass the juror for cause,  
18 Your Honor.

19 MR. HOWER: Pass for cause, Your Honor.  
20

21 FURTHER VOIR DIRE EXAMINATION

22 BY MR. REMAKLUS:

23 Q. Now --

24 THE COURT: Just a minute, I want to just ask him a  
25 couple more questions.

1           You say, Mr. Smalley, you have followed this in the  
2 papers from the beginning.

3           Can you tell me some of the things that you remember  
4 just as you sit here today from your recollection of these  
5 articles you read? Things you have read and that you remember  
6 and stand out in your mind about the case.

7           THE WITNESS: Well, I travel the roads between here and  
8 Donnelly every day, twice a day, and sometimes four or five  
9 times a day. So, I went right past the area where this was,  
10 where they were found, so --

11          THE COURT: That made an impression?

12          THE WITNESS: That really did, yes, um-hmm.

13          THE COURT: Of the things you read in the paper that  
14 you say you followed closely of this, they made an impression  
15 on you?

16          THE WITNESS: Yes.

17          THE COURT: I'd like you to relate to me -- I'm trying to  
18 find out if you really remember specific items in the paper and  
19 things that you remember. If you do, tell me what they are.

20          THE WITNESS: Oh, I don't know whether I can remember  
21 anything specifically or not.

22          THE COURT: Do you remember anything about other charges  
23 or anything like that?

24          THE WITNESS: You mean other charges than Valley County?

25           Oh, I remember that there was various different

1 charges throughout the country and around that were brought up  
2 in the paper.

3 THE COURT: Do you remember that?

4 THE WITNESS: Um-hmm.

5 THE COURT: Anything else you remember?

6 Did you read about the airplane crash?

7 THE WITNESS: Oh, yes, you bet, yeah.

8 THE COURT: What do you remember was the purpose of that  
9 trip, or whatever that was involved there?

10 THE WITNESS: Well, I understand that the purpose of  
11 that trip was to show where other victims were at; what I  
12 understood the purpose of it.

13 THE COURT: Anything else you remember reading specifically?

14 THE WITNESS: Not right offhand.

15 THE COURT: Do you feel that, under the instructions of  
16 the Court, you could set those things aside and consider --  
17 recognize they are improperly considered and listen to the  
18 evidence here and make a decision solely on the evidence you  
19 received here in court?

20 THE WITNESS: Oh, I'm pretty sure that I could probably  
21 do that, yeah.

22 THE COURT: You have that ability?

23 THE WITNESS: Follow this, yeah.

24 THE COURT: All right.

25 Go ahead, Mr. Remaklus.



1 Q BY MR. REMAKLUS: Mr. Smalley, I'll have some  
2 additional questions and I'm sure Mr. Hower will also, with  
3 reference to other matters, you know, that concern the selection  
4 of a juror.

5 Does the attorney-client relationship exist between  
6 you and Mr. Hower?

7 A No.

8 Q In other words, he's not doing any legal work for  
9 you?

10 A No.

11 Q You know Mr. Hower; do you not?

12 A You bet, you bet.

13 Q What's the nature of that acquaintanceship?

14 A Well, we worked together in this EOE program within  
15 the county and within the Whitecap area several years back. We  
16 traveled together to and from meetings.

17 Q Now, would that -- do you think that would affect  
18 your judgment in this case?

19 A Oh, I don't think so.

20 Q Of course, I remember back, I guess I was active  
21 in that --

22 A Right.

23 Q -- program several years ago too, Mr. Smalley.

24 Now, there's no attorney-client relationship between  
25 you and I, is there?

1 A. No.

2 Q. Of course, you are acquainted with both of us?

3 A. That's true.

4 Q. Is there anything in -- our acquaintanceship is

5 casual, I think would best describe it; wouldn't it, Mr. Smalley?

6 A. That's right, yeah.

7 Q. There's nothing in the fact that you and I have been

8 acquainted for some period of time that would make any difference

9 to you as far as this defendant is concerned, is there?

10 A. No, no.

11 Q. Have you, Mr. Smalley, ever given any consideration

12 to the death penalty?

13 A. Well, yes, I think I have.

14 Q. Did you arrive at any conclusions?

15 A. Not at anything, really solid. I've just thought

16 vaguely in my mind.

17 Q. I'm sure we've all thought of it.

18 A. Yeah.

19 Q. Do you think that there is anything in connection

20 with your thoughts on the death penalty that could keep you

21 from being a fair and impartial juror in this particular case?

22 A. Is there anything that would make me give a fair

23 and impartial judgment?

24 Q. Let me ask you in a different way, maybe it would

25 make it a little easier to answer. This is a different area for

1 me to ask questions in, Mr. Smalley.

2 A. I realize that.

3 Q. I'm sure you can appreciate that. Since the death  
4 penalty is involved in this case, would -- and of course if that  
5 is the law and you and I can't change the law and neither can  
6 the Judge. If that is the law, would that -- would that  
7 affect your decision in the deciding of the guilt or innocence  
8 based on the evidence that you would see here and hear in the  
9 courtroom?

10 A. I -- oh, I don't think it would affect my decision,  
11 no, if that was the law, yeah.

12 Q. Yes.

13 A. Um-hmm.

14 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

15 MR. HOWER: Pass for cause, Your Honor.

16 THE COURT: Mr. Smalley, we'll ask you to return, then,  
17 to the American Legion Hall and wait over there. We'd ask you  
18 also not to discuss the questioning here you have been  
19 subjected to with the other jurors.

20 THE WITNESS: Yeah, okay.

21 THE COURT: State's seventh.

22 THE CLERK: Joanne Carter.

23 THE COURT: Mrs. Carter, you were one of the two jurors  
24 when we called the roll that we didn't have on the list when  
25 you raised your hand at that time.

1 MRS. CARTER: Right.

2 THE COURT: Have you filled out one of these juror  
3 qualification forms, questionnaires?

4 MRS. CARTER: I filled out a form that you guys sent me.

5 MR. PURDY: Your Honor, there are copies being made now.

6 THE COURT: Can you tell me how you were served for  
7 jury service?

8 MRS. CARTER: By certified mail.

9 THE COURT: I see. When did you get that?

10 MRS. CARTER: I got it for the 12th, 13th and 14th and I  
11 was not able to make it so I called Magistrate Court office  
12 and they told me I was supposed to be here.

13 THE COURT: You had been summoned for an earlier trial?

14 MRS. CARTER: Yes.

15 THE COURT: Okay.

16 I want to wait until the questionnaire comes.

17 MR. REMAKLUS: I would like to wait until we have the  
18 form.

19

20

JOANNE CARTER,

21 a prospective juror herein, having been first duly sworn, took  
22 the stand and testified as follows:

23

24

25

1 VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mrs. Carter, the first questions that we're going  
4 to ask you about are going to be confined, as much as possible,  
5 to newspaper articles you may have read and radio and television  
6 broadcasts and conversations and things of that nature.

7 Have you followed this matter in the newspapers?

8 A. Yes, I have.

9 Q And have you followed it on a day-to-day basis?

10 A. It was hit and miss, mainly.

11 Q And have you heard about it on television news and  
12 on radio news?

13 A. Yes, I have.

14 Q And have -- I see you are employed and, if you  
15 weren't here now today, would you be up working?

16 A. Yes, I would be.

17 Q Have you heard this matter discussed there at the  
18 -- are you working at the nursing home?

19 A. Yes.

20 Q And have you heard this matter discussed there at  
21 the nursing home?

22 A. Yes.

23 Q And have you participated in discussions at the  
24 home?

25 A. Yes.

1 Q During these conversations, has anybody expressed  
2 an out and out opinion as to guilt or innocence of the  
3 defendant?

4 A Yes.

5 Q And have you formed any opinions as to guilt or  
6 innocence because of that?

7 A Yes, I have.

8 Q Direct your attention back to the newspaper articles.  
9 Have you read the recent ones, say, in the Sunday, Monday and  
10 Tuesday papers?

11 A I think I read the Sunday paper and the Monday  
12 paper.

13 Q Are the -- do you remember what the papers had to  
14 say in those articles?

15 A On some of them, on the Sunday one I did.

16 Q Would you tell me what you remember from the  
17 Sunday paper?

18 A It was stated that they was being brought to trial  
19 here in Cascade; that there was bodies found in the State of  
20 Idaho and that they were going to -- trying to arraign  
21 Mr. Creech in some of the other states.

22 Q And have these newspaper articles caused you to have  
23 an opinion in the matter?

24 A Yes, I think so.

25 Q And would your opinion be such that if you were a

1 juror here it would take some evidence to change the present  
2 opinion that you now have?

3 A. I don't know. I really don't.

4 Q. Do you think that if you were selected as a juror  
5 that you could separate from your mind things that you have  
6 heard and read about this case?

7 A. Yes, I could.

8 Q. I think sometimes it's pretty difficult to put  
9 aside, you know, things that -- and they stay with us. What  
10 we're trying to do is determine, you know, find 12 people who  
11 have an open mind and can be absolutely fair and impartial with  
12 reference to the defendant in this case.

13 Now, do you think that you could do that and put  
14 aside what you have read and conversations that you have been  
15 involved in and arrive at a fair and just verdict in this case?

16 A. I think I could, yes.

17 MR. REMAKLUS: We will pass the juror for cause,  
18 Your Honor.

19

20

#### VOIR DIRE EXAMINATION

21 BY MR. HOWER:

22 Q. Well, Mrs. Carter, do you recall reading in the  
23 Idaho Daily Statesman a news story about a forced aircraft  
24 landing in which Mr. Creech was involved?

25 A. No, I don't.

1 Q You didn't read any story about that?

2 A No.

3 Q Do you remember reading any story about any trips

4 he had been taken on outside this state?

5 A If I remember correctly there was one article I

6 read about him taking one trip out or I've heard conversation

7 about this. But, I have not read it, no.

8 Q You have heard conversation about it?

9 A Yes.

10 Q Have you heard, then, conversation about the forced

11 landing in the airplane?

12 A Yes.

13 Q You knew about that?

14 A Yeah.

15 Q From the conversations do you know what the trip

16 was for?

17 A No, I don't.

18 Q Do you know where the trip was to?

19 A I think it was California.

20 Q Um-hmm. But, you haven't heard what the purpose

21 of the trip was?

22 A No.

23 Q Okay. What have you heard about possible

24 connections between Mr. Creech and crimes in other states?

25 A Okay. I heard about the possible crimes in Nevada;



1 that he could have committed and here in Idaho. But, I'm not  
2 for sure about the rest of the states.

3 Q What was it you heard about possible crimes in  
4 Nevada?

5 A Okay. I heard that there was found two -- I think  
6 two or three bodies of men was found in Nevada at the  
7 "discretion" of Mr. Creech's words, or advice to the police  
8 officers.

9 Q Okay. And response to his directions?

10 A Yes.

11 Q The bodies were found in response to directions  
12 given by him?

13 A Yes.

14 Q Did you hear this, Mrs. Carter, from a source that  
15 you have confidence in?

16 A No.

17 Q As far as you are concerned, it could have been  
18 just idle gossip and not anything you put any credence in, is  
19 that right?

20 A Yes.

21 Q So, that as you sit here now you don't lean either  
22 way as to whether this is true or not?

23 A No.

24 Q You do not?

25 A No.

1           Q     Okay. Mrs. Carter, if you were impaneled as a  
2 jurist in this case and instructed after hearing all the  
3 evidence presented in court that you may find the defendant  
4 guilty of some offense only if that is proved beyond a  
5 reasonable doubt by the evidence presented in court, do you  
6 think, when you went over all you've heard about this case  
7 prior to the trial and all you heard and saw during the trial,  
8 that you could separate one from the other so that you would  
9 base your decision exclusively on what you heard and saw in  
10 court?

11           A     I really don't know. I would hope to try and do  
12 what would be -- what was said in court is what I would base --  
13 try to base the evidence on, yes.

14                     But, to -- really to say that definitely I could  
15 separate from what I heard, I could not honestly answer that,  
16 I mean, to tell you -- come right out and say "Yes" or "No"  
17 on it.

18           Q     This last answer, when you say you don't know if  
19 you could, it's based on the assumption that you would do your  
20 best; that you would try?

21           A     Yes.

22           Q     But even if you try you are not certain whether  
23 or not facts already in your mind or ideas already in your  
24 mind could be excluded?

25           A     Right.

1 MR. HOWER: On that basis, Your Honor, I challenge for  
2 cause.  
3 MR. REMAKLUS: I would not resist the challenge.  
4 THE COURT: You won't?  
5 MR. REMAKLUS: No, sir.  
6 THE COURT: All right, we appreciate your frankness here,  
7 Mrs. Carter, and we'll excuse you, then.  
8 We do have another trial set on June the 5th at  
9 10:00. You'll have to report for it if you remember that  
10 date.  
11 If you have to pick up things I'll just ask you  
12 not to discuss what you heard here or what's been asked to  
13 the other jurors.  
14 We'll take a ten-minute recess at this time.  
15 (Recess taken.)  
16 THE COURT: Back on the record.  
17 Draw another name.  
18 MR. REMAKLUS: I'm not sure where we are.  
19 THE COURT: Yes, just excused Mrs. Carter for cause.  
20 THE CLERK: Clyde Barlow.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CLYDE BARLOW,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mr. Barlow, in the first portion of jury selection  
in this case we're going to attempt to confine our questions  
as much as possible to pretrial publicity consisting of  
newspaper articles, conversations, radio and TV broadcasts  
and things of that nature and we may stray afield, but we're  
going to try to -- pretty much to keep it confined to that.

Mr. Barlow, have you followed this matter in the  
daily papers?

A I did, yes I have.

Q And have you -- of course, I know that you are in  
the cafe business at McCall and it's your activity engaged in  
that. Has there been conversations there at the cafe that  
led you to any opinion in this matter?

A Yes, there has been.

Q And do you think that if you are chosen as a  
juror that you could enter a fair and impartial verdict?

A I'm afraid I couldn't. I mean, I think I've  
already got my mind made up. I've heard too many different  
stories on this thing.

1 MR. REMAKLUS: Yes. I would ask that Mr. Barlow be  
2 excused for cause, Your Honor.  
3 MR. HOWER: No exception, Your Honor.  
4 THE COURT: Mr. Barlow, in making up your mind is this  
5 based on mostly conversations you heard in your place of  
6 business?  
7 THE WITNESS: That and I've read in the paper, yes.  
8 THE COURT: How recently have you read stories in the  
9 paper about this?  
10 THE WITNESS: Well, I suppose probably last week. I  
11 just don't remember just when.  
12 THE COURT: Do you have any distinct memory of  
13 particular events in the papers; things that you've read about  
14 in the paper that have helped form this opinion?  
15 THE WITNESS: Yes. Well, I followed it ever since.  
16 THE COURT: Can you tell me what some of those  
17 statements were in the papers that have this effect on you;  
18 specific statements?  
19 THE WITNESS: Well, when bodies was found down here  
20 in Donnelly, why, naturally I thought it all the way through  
21 there.  
22 THE COURT: Anything since that that you've read that's  
23 had an effect on you?  
24 THE WITNESS: Oh, I don't really know about that, no.  
25 THE COURT: Did you read about this airplane crash?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE WITNESS: Yes, I did. I read about that.

THE COURT: Do you recall reading anything about the purpose of that trip?

THE WITNESS: Yes, it was on the confession on other bodies, or something on that order.

THE COURT: Have you read any other stories that relate to that same type of material, or subject matters?

THE WITNESS: Well, I've read other stories, yes.

THE COURT: On that same subject?

THE WITNESS: Um-hmm.

THE COURT: Have those had an effect on forming your opinion?

THE WITNESS: Well, yes.

THE COURT: All right, well, I'll grant the challenge, then, and excuse you, Mr. Barlow. Thank you for your frankness.

You will have to appear for another trial on June the 5th at 10:00 if you remember that day.

THE WITNESS: All right. Thank you.

THE CLERK: Patricia Guillet.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PATRICIA L. GUILLET,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Guillet, the first part -- we're going to attempt  
to confine our first questions to you to matters concerning  
newspaper reports, television broadcasts, conversations and the  
like.

Bearing that in mind I wish to ask you if you have  
followed this matter in the papers.

A. Pretty much so.

Q And I'm assuming you folks have a TV set?

A. Yes.

Q And you picked it up in the news?

A. Occasionally.

Q And I see by the juror qualification form that you  
spend most of the time at home, I presume?

A. Yes.

Q Have you had occasion to have many -- or any  
conversations regarding this matter with anyone; other than  
Mr. Guillet?

A. You mean concerning today or --

Q No, no, concerning the Creech case.

1 A. Mostly just in casual conversation, you know, if you  
2 happen to see somebody on the street or something. But, if the  
3 subject came up nothing specific I can think of.

4 Q. Did it come up very often?

5 A. No.

6 Q. Fine. Has the -- you think that what you have seen  
7 in the newspaper or television news broadcasts would keep you from  
8 rendering a fair and impartial verdict in this case; based on the  
9 evidence you'd hear in the courtroom?

10 A. I would hope that I'd be open minded. But, I don't  
11 know, some of the facts that have come out that I read in the  
12 paper are pretty one-sided I have to say.

13 Q. Have those facts caused you to arrive at any  
14 conclusions? I mean, as to guilt or innocence?

15 A. Well, I would say what I have read so far indicates  
16 that he is guilty. But, if something came up to show that he  
17 wasn't, then --

18 Q. You think then that you could if you were, say --  
19 you haven't been a juror before, have you?

20 A. No, I haven't.

21 Q. If the Judge were to instruct you that you had to  
22 base your decision on evidence that you would hear and see right  
23 here in the courtroom could you exclude these other things from  
24 your mind sufficiently to render a fair and impartial verdict  
25 based only on this evidence?



1 A. I would think that's all I could do.

2 Q Do you have a fixed opinion at this time that would  
3 take evidence to change?

4 A. No, not necessarily.

5 Q Mrs. Guillet, have you heard the legal proposition  
6 that a defendant is presumed to be innocent until proven guilty  
7 beyond a reasonable doubt? Have you heard that?

8 A. Yes.

9 Q If the Judge is to instruct you that that is the law  
10 in this case, would you follow that instruction?

11 A. I would certainly try to, yes.

12 Q Could you give the defendant that benefit of that  
13 presumption of innocence in this case?

14 A. Yes, I think so.

15 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

16

17 VOIR DIRE EXAMINATION

18 BY MR. HOWER:

19 Q Mrs. Guillet, you have, several times, said you  
20 would try but you have not said, to my knowledge said, with  
21 confidence, that you could.

22 We all understand that the problem is difficult.

23 A. Yes.

24 Q Do you have confidence that you could do that?

25 A. I think so. I try not to judge people. I see the

1 evidence for instance down close up.

2 Q Yes.

3 A And I try to dismiss that unless it's something I

4 know for sure myself.

5 Q Well, Mrs. Guillet, does what you have heard that is

6 presented to you as the facts of this case --

7 A Um-hmm.

8 Q -- does it go beyond town gossip?

9 A No, just goes -- no -- now, would you restate that

10 for me?

11 Q Yes. I'm trying to get at the reliability that you

12 give to the source of this information.

13 A Um-hmm.

14 Q I assume that town gossip you take with a very

15 cautious attitude?

16 A Definitely.

17 Q And that, perhaps, what you read in the newspapers

18 or what you hear in the course of serious conversations you do

19 not take quite so cautiously; would that be a fair statement as

20 to how you have received this information? How you've reacted

21 to it?

22 A I consider most of the things I hear on TV or read

23 in the paper as, perhaps, there's a grain of truth in it.

24 Q Yeah.

25 A But --

1 Q Now, would you tell us the important things that  
2 you can remember that you have read in the newspaper, or heard  
3 on television that bears on the question of Mr. Creech's guilt  
4 or innocence?

5 A The big question in my mind is the fact that -- not  
6 so much the fact that he's accused of the two murders in this  
7 county, but the fact that he has led the police to other bodies.  
8 I don't see how he would know where they were unless he was  
9 involved. It makes me wonder whether, as far as what went on  
10 here, I can't really say because I haven't heard the evidence  
11 one way or the other.

12 Q But, to the extent, Mrs. Guillet, that you believe  
13 he did lead law enforcement officers to other bodies in other  
14 places; would that influence you to believe that he is more  
15 likely to be guilty of the Valley County charge than you would  
16 otherwise think he was?

17 A It's possible, so it could influence me. I don't  
18 know, I think. Although, if he's -- well, I don't know. I would  
19 try to be open minded on this charge, but that might be in the  
20 back of my mind. I can't really say it wouldn't.

21 Q Mrs. Guillet, if you were to sit as a juror --

22 A Um-hmm.

23 Q -- and you sit in court and hear all the evidence  
24 presented in court and at the end of that time you are  
25 instructed by the Court, by the Judge, to base your decision

1 solely on that evidence --

2 A. Um-hmm.

3 Q. -- let's suppose further that you try hard to do  
4 that.

5 A. Right.

6 Q. Are you confident that you could exclude from your  
7 mind whatever impression is left of the stories you've read that  
8 he went to other states and pointed out bodies; or whatever  
9 else you have read before the trial started?

10 Are you confident that those things wouldn't still  
11 be in there affecting your decision?

12 A. I'm not absolutely sure but I would try, that's  
13 all I could say.

14 MR. HOWER: I see. Thank you for your candor.

15 I'll pass the juror for cause on this issue,  
16 Your Honor.

17 THE COURT: Just ask one more question, Mrs. Guillet.

18 You made an initial statement that some of the facts  
19 you read in the paper are pretty one-sided. Have you related  
20 those facts you related to Mr. Hower that have affected you, are  
21 those the facts you are referring to in that statement?

22 THE WITNESS: Yes, about the out-of-state evidence.

23 THE COURT: Any other facts that you are referring to?

24 THE WITNESS: No.

25 THE COURT: You understand both sides have passed for

1 cause?

2 MR. REMAKLUS: Yes.

3 THE COURT: All right, you may further examine on other  
4 grounds for cause, then.

5

6 FURTHER VOIR DIRE EXAMINATION

7 BY MR. REMAKLUS:

8 Q Mrs. Guillet, I'm going to have a few other questions  
9 that will regard your qualifications here to sit as an impartial  
10 trial juror and I'll try to make them brief.

11 Have you considered the death penalty?

12 A Yes.

13 Q Do you have an opinion on the death penalty?

14 A Yes, I feel it should be reinstated.

15 MR. HOWER: I didn't understand the answer.

16 THE COURT: Should be reinstated.

17 Q BY MR. REMAKLUS: If the Judge -- if you are  
18 advised that we do have the death penalty in Idaho, then do you  
19 believe in the death penalty?

20 A If the deed warranted it, yes.

21 Q Well, sooner or later in the course of this trial  
22 you are going to find out, Mrs. Guillet, that there is a mandatory  
23 death penalty in the State of Idaho for first degree murder.

24 A I didn't know that.

25 Q Now, the question is if you can and there is the

1 additional confusing proposition, the legal proposition, that  
2 the fixing of the penalty, of course, that's a matter of law and  
3 the legislature has done that and there's nothing you and I can  
4 do about that, or the Judge. You understand what I mean?

5 A. Um-hmm.

6 Q. And I'm sure that if you are chosen as a trial  
7 juror the Judge is going to instruct, as a matter of law, that  
8 you are not to consider what the penalty may be in arriving at  
9 your verdict.

10 So, the question then is, can you arrive at a  
11 verdict based on the evidence that you would see and hear in  
12 the courtroom without regard to your opinion as to the death  
13 penalty?

14 A. You mean whether it was just guilty or not guilty;  
15 is that what you are referring to?

16 Q. Yes.

17 A. Yes, I would be glad to be relieved of that  
18 responsibility.

19 Q. Yes. Thank you, I'll -- well, let me look at the  
20 list here. You folks have only lived in McCall a short time;  
21 haven't you?

22 A. Three years this summer.

23 Q. Um-hmm. Mr. Guillet is in the real estate business  
24 there?

25 A. Yes.

1 MR. REMAKLUS: I have no further questions. Thank you  
2 Mrs. Guillet.

3  
4 FURTHER VOIR DIRE EXAMINATION

5 BY MR. HOWER:

6 Q Mrs. Guillet, I have a few more questions.

7 Is your husband working in the real estate business  
8 in McCall?

9 A He is in McCall half the time and, then, he teaches  
10 real estate sales and he travels and teaches it.

11 Q He travels and teaches what?

12 A Real estate sales. So, he sells.

13 Q What affiliation does he teach at?

14 A Just on his own.

15 Q On his own?

16 A Um-hmm.

17 Q You think of your home now as being in McCall?

18 A Yes.

19 Q Your children are in school there?

20 A Yes.

21 Q Your data sheet here says that you have lived in  
22 the State of Idaho three years. Have you also lived in Valley  
23 County those three years?

24 A Yes.

25 Q Where did you come from?

1 A. Southern California.  
2 Q. Southern California? Orange County?  
3 A. No, Los Angeles County.  
4 Q. Los Angeles County?  
5 A. Um-hmm.  
6 Q. How long had you lived there?  
7 A. All my life.  
8 Q. You went to school there?  
9 A. Yes, um-hmm.  
10 Q. Did you graduate from high school?  
11 A. Yes.  
12 Q. Do you have any college?  
13 A. Three years.  
14 Q. Three years?  
15 A. Um-hmm.  
16 Q. Where?  
17 A. University of California, Santa Barbara. One year  
18 at Sacramento State.  
19 Q. Do you subscribe to the Idaho Daily Statesman?  
20 A. Yes.  
21 Q. What other periodicals do you subscribe to?  
22 A. The McCall paper, the Star News.  
23 Q. Is that all?  
24 A. As far as newspapers go.  
25 Q. Magazines?



1 A. Yes.

2 Q. What magazines do you subscribe to?

3 A. Sunset, National Geographic, Science Digest. Those  
4 are the three major ones, I guess.

5 Q. The things that makes a noise in my ears aren't  
6 very good. I'd like the last of your sentence again. What was  
7 the very last --

8 A. Those are the three major ones. I may, occasionally,  
9 pick up something on the news stand.

10 Q. All right. Mrs. Guillet, I don't mean, or want to  
11 pry into your personal affairs any more than necessary, but I'm  
12 sure you will appreciate that it's my responsibility to be  
13 careful and find out all I can.

14 I want to ask you if you are active in religion, any  
15 religious activities?

16 A. Yes, I'm Catholic.

17 Q. And do you belong to a church?

18 A. Yes.

19 Q. Do you attend regularly?

20 A. Yes.

21 Q. Then I can assume that you believe that an oath  
22 taken has sanctions behind it?

23 A. Right.

24 Q. That you must obey it?

25 A. Right.

1 Q If you are sworn as a member of this jury,  
2 Mrs. Guillet, the principal thing required of you is that you  
3 make your finding of guilt or innocence on the basis of what  
4 you hear in this courtroom, not on the basis of any conceptions  
5 you bring to the courtroom.

6 A I understand.

7 Q And you can't take the oath unless you feel you can  
8 do that.

9 A Um-hmm.

10 Q And you feel you can take that oath?

11 A Yes, I think so.

12 Q And bearing in mind that oath, Mrs. Guillet, are you  
13 now willing -- you've said you would try. Are you willing --  
14 are you now determined to put aside impressions and opinions,  
15 whatever else is in your mind now and give Mr. Creech a fair  
16 start when the trial starts if you sit on the jury?

17 A Yes.

18 Q And, now that you've had some more time to think  
19 about it, do you feel you can do that?

20 A I think so. I think everyone is deserving of that  
21 much.

22 MR. HOWER: We pass this juror for cause, Your Honor.

23 THE COURT: Just one other matter, Mrs. Guillet.

24 You have mentioned children. How old is your  
25 youngest?

1 THE WITNESS: Twelve.

2 THE COURT: Any problem with having them --

3 THE WITNESS: Well, that's the only --

4 THE COURT: -- alone for a few days?

5 THE WITNESS: My husband is out of town for two weeks and

6 school is out as of this weekend, next week, I guess. They are

7 quite self-sufficient, but the idea of not being ever able to

8 check with them kind of leaves me --

9 THE COURT: How old is the oldest?

10 THE WITNESS: Twenty-one.

11 THE COURT: At home?

12 THE WITNESS: Yes, he'll be home this weekend.

13 THE COURT: So, he will be able to help?

14 THE WITNESS: Yes.

15 THE COURT: All right. We will ask you to go back to

16 the American Legion Hall and not discuss the questions that --

17 or were discussed here with the other jurors.

18 THE WITNESS: All right.

19 THE COURT: Defendant's seventh.

20 THE CLERK: Maureen Fuller.

21 MR. REMAKLUS: Your Honor, may I inquire before

22 Mrs. Fuller gets here, she shows on her juror list that she's

23 a wife of Don Fuller and I believe that Mr. Fuller has already

24 been excused for cause, if I remember correctly. Is that your

25 recollection?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HOWER: Yes.

THE COURT: Yes, he has been.

MR. REMAKLUS: I'm wondering if probably the same thing would not apply to Mrs. Fuller. I think we have another husband and wife, maybe one or two more husband and wife teams on this jury, Your Honor.

THE COURT: Well, I'm not going to excuse them unless Counsel stipulate you want her excused.

That's fine, but I'm not going to.

MR. HOWER: I will stipulate that Mrs. Fuller may be excused.

MR. REMAKLUS: I would so stipulate, Your Honor.

THE COURT: Draw another name.

THE CLERK: Alfred Nitzel.

MR. ARNOLD: This is Mrs. Fuller.

THE COURT: Mrs. Fuller, we assume that -- Counsel informed me that Donald Fuller is your husband, is that right?

MRS. FULLER: Right.

THE COURT: And he was excused before. They've stipulated, since we've excused your husband, we'll excuse you too.

So, thank you for your appearance here and sorry we kept you waiting so long.

MRS. FULLER: Thank you.

THE COURT: You'll have to appear again on June 5th at

1 10:00 if you will remember that.

2 MRS. FULLER: Okay.

3 MR. REMAKLUS: Mr. Nitzel, did you fill out a Juror  
4 Qualification Form when you were summoned?

5 MR. NITZEL: Yeah.

6 MR. REMAKLUS: I'm wondering if we could -- I don't  
7 locate one in my jury list.

8 MR. HOWER: I didn't find it either, Your Honor.

9 THE COURT: I don't know whether I have it either.  
10 Would you check.

11 MR. NITZEL: I think it was just mailed in today. See,  
12 I wasn't here yesterday.

13 MR. REMAKLUS: Did you put it in the mail yesterday?

14 MR. NITZEL: No, today.

15 MR. REMAKLUS: Where did you mail it? Right here in the  
16 post office?

17 MR. NITZEL: Yeah.

18 MR. REMAKLUS: What time of day was that?

19 MR. NITZEL: I don't remember. My wife mailed it this  
20 morning.

21 MR. REMAKLUS: Would you check with the Clerk. They may  
22 have picked it up in today's mail.

23 THE COURT: Do I understand you weren't here yesterday,  
24 Mr. Nitzel?

25 MR. NITZEL: No, I wasn't.

1 THE COURT: You weren't here when we swore the rest of  
2 the jurors?

3 MR. REMAKLUS: That was going to be the next --

4 THE COURT: I had you checked off here. I wonder how  
5 that happened.

6 THE CLERK: He's checked off as being excused, I guess,  
7 for yesterday.

8 THE COURT: He shows excused?

9 THE CLERK: Yes.

10 MR. REMAKLUS: I would think he should be sworn at this  
11 time, then, Your Honor.

12 THE COURT: Yes, if you'll raise your hand and be sworn,  
13 Mr. Nitzel.

14

15

ALFRED CONRAD NITZEL,

16 a prospective juror herein, being first duly sworn, took the  
17 stand and testified as follows:

18

19 MR. REMAKLUS: Your Honor, since we don't have  
20 Mr. Nitzel's sheet, may we have just a little bit more leeway  
21 in questioning at this stage?

22 THE COURT: Yes.

23

24

25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q What we're trying to do at this point in selection of the jury, Mr. Nitzel, is to confine our questions, as much as possible, to the proposition of pretrial publicity and by this I mean newspaper articles that you may have read or radio or TV broadcasts or things like that.

Have you followed this case in the papers?

A. Well, partly, yes.

Q And what about on the television? Do you catch the news in the evening?

A. Yes.

Q And have you, with any -- I'm assuming that you have not gone to the mail box looking for the newspaper to follow the Creech case with any particular point in mind?

A. No.

Q Have you ever been a juror before?

A. No.

Q Now, if you are selected here as one of the trial jurors, the Judge will instruct you as to the law in this case and one of the things I'm sure he's going to instruct you is that when you retire to the jury room to arrive at a verdict and that you, as a sworn juror, will have to base your decision only on the evidence that you see and hear right here in the courtroom.

1                   Now, having that in mind, can you render a fair and  
2 impartial verdict in this case?

3           A.     Well, from all that I know, I don't think I could.

4           Q.     And why is that, Mr. Nitzel?

5           A.     Well, I happened to come along the highway when  
6 they brought the two bodies up here and I seen all that and the  
7 things I've followed in the paper and everything, I don't think  
8 I could do her.

9           Q.     You think your exposure there, you happened to be  
10 at the scene, was that it, Mr. Nitzel?

11          A.     Yeah, just coming along there at the time.

12          Q.     That's pretty well fixed in your mind, then; isn't  
13 it?

14          A.     Yes.

15          Q.     Did you stop your vehicle and inspect the scene?

16          A.     Well, I had to stop for a second there for awhile  
17 and then go on.

18               MR. REMAKLUS: Um-hmm. Well, I would ask that Mr. Nitzel  
19 be excused for cause, Your Honor.

20               MR. HOWER: No exception.

21               THE COURT: You indicated, Mr. Nitzel, also in addition  
22 to that fact that you saw those things, were those things that  
23 you saw at the scene, you've also -- you've read some things.  
24 Could you tell me what those are?

25               THE WITNESS: In the paper?



1 THE COURT: Yes.

2 THE WITNESS: Well, it was different things that's  
3 happened in different places like in Oregon and Nevada and  
4 all over.

5 THE COURT: All right. We'll excuse you, Mr. Nitzel,  
6 then. Thank you for your appearance here. You'll have to  
7 report again on June the 5th at 10:00 for another jury trial on  
8 a different matter.

9 THE WITNESS: All right, yes.

10 THE COURT: Thank you.

11 THE CLERK: Betty Gestrin.

12

13 BETTY M. GESTRIN,

14 a prospective juror herein, having been first duly sworn, took  
15 the stand and testified as follows:

16

17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q Mrs. Gestrin, we're going to attempt to confine our  
20 questions at this point to any pretrial publicity to which you  
21 may have been exposed and I'm referring to newspaper articles  
22 and TV broadcasts and things like that.

23 Have you followed this in the papers?

24 A Yes, sir.

25 Q Would you tell us about that, please. Every day?

1           A.    Yes, I think every -- probably every report that  
2 has come out on it I've probably read or listened to on  
3 television.

4           Q.    Is this because you have looked for the Creech case  
5 or is it because you customarily read the paper?

6           A.    Both.

7           Q.    Have you arrived at any conclusions? Do you have  
8 any opinions already in your mind with reference to this case?

9           A.    Well, I think so.

10          Q.    What were -- what we are searching for here are  
11 12 people that have an open mind and can listen to the evidence  
12 only here in the courtroom and arrive at a fair and just verdict.

13                Now, do you think you've heard -- read enough about  
14 it where you could not do so?

15          A.    No.

16          Q.    You have not been a juror before, have you?

17          A.    No, I haven't.

18          Q.    Now, if you are selected as a trial juror the  
19 Judge will read you the instructions and in those instructions  
20 are the law as it now is and how it is applied to this case and  
21 you will have to follow those instructions, Mrs. Gestrin.

22          A.    Um-hmm.

23          Q.    Now, I'm sure among those instructions is going to  
24 be one that will advise you that you must arrive at your decision  
25 based only on the evidence that you see and hear right here in

1 the courtroom.

2 Now, bearing in mind that you have read about this,  
3 could you follow that instruction?

4 A. Yes, sir.

5 Q. You will also be instructed, I'm sure, Mrs. Gestrin,  
6 that the defendant is presumed to be innocent until proven  
7 guilty beyond a reasonable doubt.

8 A. Um-hmm.

9 Q. Do you believe in that legal proposition?

10 A. Yes.

11 Q. Presumption of innocence?

12 A. Yes.

13 Q. And will Mr. Creech have the -- that benefit of that  
14 presumption as far as you are concerned going into this trial?

15 A. Well, yes.

16 Q. You feel that you have the ability to follow the  
17 instructions and base your decision on the evidence right here?

18 A. Yes.

19 MR. REMAKLUS: We'll pass the juror for cause, Your Honor.

20

21 VOIR DIRE EXAMINATION

22 BY MR. HOWER:

23 Q. Mrs. Gestrin, how close is your home to the scene  
24 of the alleged crime that we're here concerned with?

25 A. About nine miles.

1 Q About how far?  
2 A About nine miles.  
3 Q Nine miles?  
4 A Um-hmm.  
5 Q And there are, what, two families, a kin of your  
6 husband's, that live closer than that; is that correct, or about  
7 that same distance?  
8 A About the same distance.  
9 Q Yes, um-hmm. Have you and members of your family  
10 had a special interest in this event because of that  
11 proximity?  
12 A Well, just that it happened so close to home.  
13 Q Yes, I understand. You have read the stories in  
14 the Idaho Statesman about it?  
15 A Yes.  
16 Q Would you tell us, please, Mrs. Gestrin, what you  
17 remember from those news stories, if anything, about a reported  
18 forced landing of an airplane carrying Mr. Creech. Do you  
19 remember anything about it?  
20 A Oh, yes.  
21 Q Do you remember where they were going or coming from?  
22 A Coming back from California.  
23 Q Do you recall what the paper reported to be the  
24 purpose of the trip?  
25 A To look for additional bodies.

1 Q Do you recall reading any other references in the  
2 Statesman to serious crimes in other states linked to  
3 Mr. Creech?

4 A Yes.

5 Q Generally speaking, Mrs. Gestrin, when you read  
6 something in the paper are you strongly inclined to believe  
7 that it's true until or unless you hear otherwise?

8 A Well, I think we have to read everything today  
9 with a grain of salt; that we can't believe everything we read.

10 Q Well, do you or don't you at this time have a  
11 pretty strong impression in your mind that these things we've  
12 talked about; that you've read about Mr. Creech, are, in fact,  
13 true?

14 A Yes.

15 MR. HOWER: I challenge for cause, Your Honor.

16 MR. REMAKLUS: I don't resist the challenge, Your Honor.

17 THE COURT: All right, we appreciate your frankness,  
18 Mrs. Gestrin, and you are not shirking your duties in any way  
19 to tell us these things. We appreciate your being honest about  
20 it.

21 We'll excuse you, however, we have another jury  
22 trial scheduled here in the county on June 5th at 10:00 if you  
23 will come back then.

24 THE WITNESS: All right, fine. Thank you.

25 THE CLERK: Ruth Mason.

1 THE COURT: Apparently that's one that couldn't come  
2 the first day but she said she could report later.

3 (Brief delay.)

4 THE COURT: Mrs. Mason, just a minute. You weren't here  
5 the first day, were you? You were excused that first day?

6 MRS. MASON: Yes.

7 THE COURT: So, you haven't been sworn on voir dire  
8 examination?

9 MRS. MASON: No, I have not.

10 THE COURT: Would you stand up please and raise your  
11 right hand and the Clerk will swear you.

12  
13 RUTH MASON,  
14 a prospective juror herein, being first duly sworn, took the  
15 stand and testified as follows:

16  
17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q Mrs. Mason, the first part of the questioning that  
20 we're going to conduct here is going to be with reference to  
21 whether or not you've been exposed to newspaper articles,  
22 television broadcasts and things of that nature and we're going  
23 to try to confine them to that.

24 Now, have you seen about this case in the papers?

25 A. Yes, I have.

1 Q And have you folks followed the news on television?

2 A Yes.

3 Q Have you made any particular point involving the  
4 Creech case?

5 A Not in particular, no.

6 Q Now, the television broadcasts, did you say that  
7 you had seen some on the news?

8 A I can't remember of anything in particular on the  
9 news; in the newspaper, yes.

10 Q I see. On the questionnaire you sent in that you've  
11 never been a juror before.

12 A No, I have not.

13 Q Have you ever been called down and been in a  
14 courtroom while jurors were questioned?

15 A No, I have not.

16 Q Now, if you are selected as a trial juror the  
17 Judge will read the instructions to the jury and in those  
18 instructions will be contained what we call the law of the case  
19 and this means that this is the law that applies to this  
20 particular lawsuit.

21 You will be bound to follow the law as laid out to  
22 you by the Judge. Now, I'm sure, among those instructions that  
23 you will be advised that you must base your decision in this  
24 lawsuit only upon the evidence that you would see and hear here  
25 in this courtroom.

1 Now, would you -- you can follow that instruction;  
2 could you not, Mrs. Mason?

3 A. Yes, I understand that.

4 Q. And all we're looking for here are 12 people who  
5 have an open mind on this and can return a fair and impartial  
6 verdict. Do you consider yourself to have an open mind in this  
7 matter at this time?

8 A. Yes, I think I have an open mind.

9 MR. REMAKLUS: Pass the juror for cause, Your Honor.

10

11 VOIR DIRE EXAMINATION

12 BY MR. HOWER:

13 Q. Mrs. Mason, without having made a point of it, you  
14 have read, certainly, stories in the Idaho Statesman about  
15 this case; is that correct?

16 A. No, it's been a local paper.

17 Q. In the Star News?

18 A. In the Star News.

19 Q. Have you read any stories about it in the Statesman?

20 A. Be quite awhile, I think I probably have.

21 Q. Do you subscribe to the Idaho Statesman?

22 A. Yes, I do.

23 Q. Do you normally read it fairly carefully?

24 A. No, not normally.

25 Q. Do you have any specific memory of having read any



1 stories involving this case or Mr. Creech in the Statesman?

2 A. A specific story?

3 Q. Yes.

4 A. Yes, I would say that I've read, or scanned over  
5 it.

6 Q. Do you recall reading a story in the Statesman  
7 about an aircraft forced landing --

8 A. Yes.

9 Q. -- which Mr. Creech was involved?

10 A. Yes.

11 Q. Will you tell us, please, the main elements of  
12 that story as you now remember them?

13 A. Well, it seems to me he was taken out of state to  
14 present -- or to be asked some questions about something. I  
15 remember it was on the top of the page, on the front page.

16 Q. Do you remember what state he was reported to have  
17 been taken to?

18 A. No, I'm sorry, I don't.

19 Q. Do you have any memory at all, Mrs. Mason, as to  
20 the purpose of the trip?

21 A. No, I really don't. I really -- it seemed as  
22 though they had to ask him some questions about something but  
23 I don't remember what it was.

24 Q. You don't remember what the questions were about?

25 A. No, I really don't. There was something else that

1 said that the Sheriff mentioned that this had happened before,  
2 but he didn't think it would happen again.

3 Q Okay. And in that connection was the Sheriff  
4 mentioning, in connection -- the Sheriff's mentioning that it  
5 had happened before, you still have no recollection as to what  
6 the purpose was for the trip?

7 A Well, I was under -- I was under the impression  
8 he made a trip before we read it in the paper.

9 Q When you read it in the paper, Mrs. Mason, did you  
10 then get any impression as to what the trips were for?

11 A I really just scanned that part of the paper but  
12 I had -- I think I felt in my mind that it had something to do  
13 with some questioning; that they had taken him out of the state  
14 for some questioning. I don't believe it said anything  
15 specific about anything.

16 Q What the questioning was about?

17 A Right.

18 Q Did it strike you as remarkable that law  
19 enforcement officers would be taking an accused, not a convicted,  
20 but an accused person accused of murder --

21 A Remarkable?

22 Q -- flying around in airplanes, yes.

23 A No, not remarkable.

24 Q Do you recall reading any other stories,  
25 Mrs. Mason, connecting Mr. Creech -- news stories connecting

1 Mr. Creech with alleged crimes in other states?

2 A. Yes.

3 Q. What do you remember about that?

4 A. I remember one instance where he had said something  
5 about a body being buried and they had not found it there, but  
6 then in another area or in the surrounding area, perhaps, but  
7 not in the exact place.

8 Q. Do you remember what states were involved in that  
9 news story?

10 A. No, it's either Nevada or Wyoming, one of the  
11 surrounding states here.

12 Q. Would it be fair to state your memory is that  
13 they found one or more bodies on the basis of directions  
14 given by Mr. Creech?

15 A. Yes.

16 Q. Mrs. Mason, on the basis of your general  
17 experience with the truthfulness or lack of it of what you  
18 read in the newspapers, are you now inclined to believe that  
19 that's true; that it did happen?

20 A. With my experience with the newspaper? I couldn't  
21 draw a conclusion to that, sir.

22 Q. No, I understand you couldn't draw a conclusion.  
23 I'm just asking if you are inclined to believe that it's  
24 probably true as reported in the paper.

25 A. Probably.

1 Q Do you recall any other newspaper references to  
2 crimes in other states linking Mr. Creech?

3 A No.

4 Q Just the one you've talked about?

5 A That's the only one I can bring to mind.

6 MR. HOWER: Your Honor, I will challenge this witness  
7 for cause -- or this juror for cause.

8 MR. REMAKLUS: Well, no, I'd have to resist, Your Honor,  
9 because --

10 THE COURT: Do you have any more questions?

11 MR. REMAKLUS: Yes.

12

13 FURTHER VOIR DIRE EXAMINATION

14 BY MR. REMAKLUS:

15 Q I think all we are talking about here is --  
16 Mrs. Mason, is whether or not you could be satisfied in your  
17 own mind that you could base your decision only on the  
18 evidence that you would see and hear right here in the  
19 courtroom.

20 A Well, if those were the instructions that we would  
21 have those with -- that would be what I would base my  
22 opinion on.

23 MR. REMAKLUS: I'd resist the challenge, Your Honor.

24 THE COURT: Let me ask you a couple more questions,  
25 Mrs. Mason, along that line.

1           Of course, it is the principle of the system of  
2 justice, a defendant is presumed to be innocent until he's  
3 proved beyond a reasonable doubt to be guilty.

4           A correlative principle is that he doesn't have to  
5 prove his innocence at all. He doesn't have to do anything to  
6 prove his innocence, do you understand that?

7           THE WITNESS: Right.

8           THE COURT: Those two go together. The effect of that  
9 -- those principles of law is that after the State has made  
10 its evidence as you sit here you entertain a reasonable doubt  
11 of the defendant's guilt and he didn't present anything, you'd  
12 still have to find him not guilty, you understand that?

13          THE WITNESS: Right.

14          THE COURT: Now, based on what you've read and things  
15 that have had some impression on you, do you feel you could  
16 conscientiously follow those instructions and apply those  
17 principles of law?

18          THE WITNESS: I think I could.

19          THE COURT: In other words, you feel that you could  
20 set aside any impressions, or ideas you have gotten from the  
21 news stories and decide a case strictly on the evidence  
22 produced here in court, is that right?

23          THE WITNESS: I think I could.

24          THE COURT: In other words, it may be entirely possible  
25 some of those things you read in the paper aren't even

1 admissible in evidence, wouldn't be proper evidence in this  
2 case and that's why it's so important to understand when you  
3 examine your own state of mind you could set these things -- just  
4 disregard them and force yourself to set them aside and disregard  
5 them.

6 Now, we understand the mind is a complicated thing.  
7 I guess we don't all know exactly what our mind does to us, but  
8 as far as your conscious mind, you feel you could set those  
9 things aside and decide the case strictly on the evidence you  
10 heard here in open court?

11 THE WITNESS: I think I could, sir.

12 THE COURT: You feel you could conscientiously do that?

13 THE WITNESS: I feel I could.

14 THE COURT: I'll deny the challenge.

15

16 FURTHER VOIR DIRE EXAMINATION

17 BY MR. REMAKLUS:

18 Q Mrs. Mason, have you, as most people, ever given any  
19 consideration to the death penalty?

20 A Yes, I have.

21 Q Do you have any fixed opinion on the death penalty?

22 A Yes, I have.

23 Q And would you tell me what it is, please.

24 A I do not believe in the death penalty.

25 Q Now, Mrs. Mason, if the Judge were to instruct you

1 as a matter of law that the death penalty would be imposed in  
2 this case if the defendant is found guilty; would that affect  
3 your deliberations in a finding of guilt or innocence?

4 A. May I say no and why?

5 Q. Yes, please.

6 A. I would say no that it would not interfere with  
7 my opinion on whether I would say guilty or not guilty because  
8 I think that that then is up to the Judge to impose the  
9 sentence.

10 Q. So, if the Judge advises you that the sentence is  
11 not your concern, you will follow that instruction as well as  
12 all of the other instructions you may get?

13 A. Yes, sir.

14 MR. REMAKLUS: Pass this juror for cause, Your Honor.

15 MR. HOWER: We'll pass the juror for cause.

16 THE COURT: If you will return to the American Legion  
17 Hall, Mrs. Mason, and I've given the other jurors an  
18 admonition when they first came in that they shouldn't discuss  
19 the case among themselves, shouldn't let anyone approach them  
20 to discuss the case with them; that if someone did that, they  
21 should report it immediately to the Court or one of the  
22 Court Officers.

23 You also -- while this jury selection process is  
24 going on, you should not read any stories, news stories,  
25 about this case because stories are coming out as this case

1 proceeds, you see, and not read any stories about it and not  
2 watch news broadcasts about the case.

3 We have to trust you on your honor to do that and  
4 it would be improper while you are being considered as a juror  
5 to read anything more about the case or listen to any broadcasts  
6 about it or watch TV.

7 So, I would ask you to abide by that admonition and  
8 also not to discuss with the other jurors the questioning that  
9 has taken place here about your qualifications.

10 THE WITNESS: Very well.

11 THE COURT: I would like to have a conference with  
12 Counsel before we proceed about where we're going from here.

13 We'll take a short recess.

14 (Recess taken. Entire jury panel re-entered the  
15 courtroom.)

16 THE COURT: Ladies and gentlemen of the jury panel, as  
17 you can probably suspect, we haven't gotten a jury yet. We're  
18 still working on it and the question we're debating right now  
19 is to -- whether to have a night session or whether to break  
20 now and return tomorrow, all of you.

21 Now, I sort of hate to put it to a vote because,  
22 if it's really divided I'll have to make the decision. If it's  
23 overwhelming on one way or the other, we'll sort of follow your  
24 wishes.

25 How many of you would like to have a night session



1 and try to finish it tonight?

2 (Voices responding.)

3 THE COURT: All right, how many would sooner recess and  
4 start tomorrow morning?

5 (Voices responding.)

6 THE COURT: Any of you that really have a serious  
7 problem by staying?

8 Now, would you sooner recess for dinner and, then,  
9 come back after dinner or go right straight through?

10 How many would like to recess for dinner at this  
11 time and come back?

12 (Voices respond.)

13 THE COURT: How many want to go straight through?

14 (Voices respond.)

15 THE COURT: That's harder.

16 I think what we'll do, we'll take a short evening  
17 recess to give those that really need to go out and eat, time  
18 to do that. We'll take a half hour break at this time and,  
19 then, start again in half an hour, that's a quarter after 6:00.  
20 You'll still abide by the admonition I've given you, don't  
21 discuss the case.

22 You are free to make telephone calls, just don't  
23 talk about the case, that's the only restriction.

24 We'll be in recess until a quarter after 6:00.

25 (Recess taken.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Back on the record.

I might advise Counsel, Mr. Clifford Fields came in and talked to me and indicated he had a real hearing problem, he couldn't hear much that has been going on and he's been in the courtroom, so I excused him.

State's eighth preemptory.

Defendant's eighth.

THE CLERK: Carol Peterson.

CAROL J. PETERSON,  
a prospective juror herein, having been first duly sworn, took the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Peterson, during the first part of our questioning with reference to whether or not you will be a trial juror in this matter, we're going to, as closely as possible, confine our questioning to pretrial publicity; that is newspaper articles, radio and television broadcasts you may have been exposed to, conversations and things of that nature.

Now, have you followed this in the paper?

A Yes, I have.

Q And have you heard about it on television broadcasts on the news and like that?

1 THE COURT: Back on the record.

2 I might advise Counsel, Mr. Clifford Fields came in  
3 and talked to me and indicated he had a real hearing problem,  
4 he couldn't hear much that has been going on and he's been in  
5 the courtroom, so I excused him.

6 State's eighth preemptory.

7 Defendant's eighth.

8 THE CLERK: Carol Peterson.

9

10 CAROL J. PETERSON,

11 a prospective juror herein, having been first duly sworn, took  
12 the stand and testified as follows:

13

14 VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16 Q Mrs. Peterson, during the first part of our  
17 questioning with reference to whether or not you will be a  
18 trial juror in this matter, we're going to, as closely as  
19 possible, confine our questioning to pretrial publicity; that  
20 is newspaper articles, radio and television broadcasts you may  
21 have been exposed to, conversations and things of that nature.

22 Now, have you followed this in the paper?

23 A Yes, I have.

24 Q And have you heard about it on television broadcasts  
25 on the news and like that?

1 A. Yes, I have.  
2 Q And do you take the Idaho Daily Statesman?  
3 A. Yes.  
4 Q How recently have you read about it?  
5 A. Monday.  
6 Q Pardon?  
7 A. Last Monday.  
8 Q The day before yesterday?  
9 A. Yes.  
10 Q Um-hmm. Do you remember what was in the paper?  
11 A. It just went back over some of the events.  
12 Q Make any particular impression upon you?  
13 A. Mostly about the two guys in Donnelly.  
14 Q Um-hmm. Have you made it a point to follow this in  
15 the paper?  
16 A. Made it a point?  
17 Q Yes.  
18 A. No, I've just read it.  
19 Q Um-hmm. I mean, you haven't looked for it, if it  
20 was in the paper, why, you'd read it the same as any other  
21 news item, is that it?  
22 A. Yes.  
23 Q I see that you have never served on a jury before.  
24 If you are chosen to be a juror in this case the Judge will  
25 instruct you as to what the law is and under your oath as a

1 juror you will have to accept what he tells you and reads to you  
2 in the instructions as being the law in this case.

3 A. Yes.

4 Q Now, if the Judge were to instruct you that you had  
5 to make and base your decision solely and only upon the  
6 evidence that you would see and hear right here in the courtroom,  
7 would you do so?

8 A. Yes.

9 Q And do you think that you could dismiss the -- what  
10 you might have read about it from your mind and go solely on  
11 the evidence that you'd get here in the room?

12 A. No.

13 Q Do you think that in your present frame of mind  
14 that you could give the defendant a fair and impartial trial?

15 A. No, I don't.

16 MR. REMAKLUS: I'm going to pass the juror for cause,  
17 Your Honor.

18

19 VOIR DIRE EXAMINATION

20 BY MR. HOWER:

21 Q Miss Peterson, do you recall reading in a  
22 newspaper a story about an airplane crash, or airplane forced  
23 landing involving Mr. Creech?

24 A. Yes.

25 Q Do you recall whether you heard about this or read

1 about it or saw it on television or what?

2 A. I think I read it in the newspaper, but I'm not  
3 real sure.

4 Q. Assuming that you did read it in the newspaper,  
5 Mrs. Peterson, would you tell us as much as you can remember  
6 about the -- what do you remember about the story?

7 A. I don't remember that much. It was quite long  
8 ago.

9 Q. You do remember that there was a forced landing  
10 of an airplane and that Mr. Creech was aboard; is that correct?

11 A. Yes.

12 Q. Do you remember the -- where the airplane was going  
13 to, or coming from?

14 A. No.

15 Q. Do you remember where this event occurred?

16 A. No.

17 Q. Do you remember what the purpose of the trip was  
18 so far as Mr. Creech was concerned?

19 A. No.

20 MR. HOWER: You have no memory of that whatever?

21 I challenge for cause on the basis of the previous  
22 answers.

23 THE COURT: Do you resist the challenge, Mr. Remaklus?

24 MR. REMAKLUS: No, Your Honor.

25 THE COURT: Let me ask you, Miss Peterson, you have

1 indicated that you don't feel you could dismiss the matters  
2 you heard and read from your mind, is that right?

3 THE WITNESS: Yes.

4 THE COURT: For that reason you wouldn't be able to give  
5 the defendant a fair trial?

6 THE WITNESS: No, I'm too biased.

7 THE COURT: Have you formed an opinion as to his  
8 guilt or innocence?

9 THE WITNESS: Yes.

10 THE COURT: Have you expressed that opinion on occasions  
11 in the past?

12 THE WITNESS: Yes -- do you mean to -- excuse me. To  
13 different people?

14 THE COURT: To different people in conversations.

15 THE WITNESS: Yes, um-hmm.

16 THE COURT: What was that opinion?

17 THE WITNESS: I feel that he should be in prison for ...

18 THE COURT: In other words, you felt he was guilty?

19 THE WITNESS: Yes.

20 THE COURT: Can you tell me the basis -- how you came to  
21 arrive at that opinion. Just summarize the things that led you  
22 to that opinion.

23 THE WITNESS: Reading the newspaper, mostly, watching  
24 TV, the newscasts and things of this sort.

25 THE COURT: Can you tell me in a little more detail what

1 it was you read in the paper that led you to form that opinion?

2 THE WITNESS: Okay. The two bodies in Donnelly that  
3 were found. I'm not real sure, but my parents said that he  
4 already said he was guilty of killing these two people and  
5 he's told other people that -- where to go and find these  
6 bodies that --

7 THE COURT: Other bodies?

8 THE WITNESS: Than --

9 THE COURT: Did that information about other bodies come  
10 from your parents or from your reading?

11 THE WITNESS: In my reading.

12 THE COURT: From your reading?

13 THE WITNESS: Um-hmm.

14 THE COURT: We appreciate your frankness here,  
15 Miss Peterson. We'll excuse you, then. You will have to report  
16 again on June 5th at 10:00 for another jury trial. Remember  
17 that date.

18 THE WITNESS: Okay. Thank you.

19 THE CLERK: Stan Scharen.  
20  
21  
22  
23  
24  
25



1                                   STAN L. SCHAREN,  
2   a prospective juror herein, having been first duly sworn, took  
3   the stand and testified as follows;

4  
5                                   VOIR DIRE EXAMINATION

6   BY MR. REMAKLUS:

7           Q     Mr. Scharen, am I pronouncing your name correctly?

8           A     Yes.

9           Q     Thank you.

10                   The first part of our questioning is going to be  
11   confined, as closely as we can, to pretrial publicity,  
12   newspaper articles, TV broadcasts and so on that you might have  
13   been exposed to.

14                   Have you followed this in the papers?

15          A     Yes.

16          Q     And have you heard the TV broadcasts?

17          A     No, I haven't heard it on TV.

18          Q     How recently have you followed it in the papers?

19          A     Oh, let's see. The last one was, what, Saturday,  
20   Friday?

21          Q     Do you remember what was in the articles?

22          A     No, not entirely, just -- well, I don't even hardly  
23   remember any of it, just read it and I do remember the news.

24          Q     And did you make any particular point of following  
25   this case in the paper?

1           A.    No.

2           Q.    If there was an article, you read it like the rest

3 of the articles, I assume?

4           A.    Yes.

5           Q.    Do you take the Statesman?

6           A.    Yes.

7           Q.    Do you read it every day?

8           A.    Yes.

9           Q.    Have you ever been a juror before?

10          A.    No.

11          Q.    If you are selected as a juror the Judge will

12 instruct you as to what your duties are as a juror and what

13 the law is in this case and you will be bound to follow his

14 instructions.

15                Now, if the Judge instructs you, as I'm sure he

16 will, that you will have to make and base your decision on --

17 only on evidence that you would hear and see right here in the

18 courtroom, could you do that? Put aside these other things

19 and arrive at a verdict only on the evidence here in the

20 courtroom?

21          A.    Yes.

22          Q.    You think you can separate it to where you could

23 give the defendant a fair and impartial trial?

24          A.    Yes.

25          MR. REMAKLUS: We'll pass the juror for cause.

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mr. Scharen, do you recall having read in a newspaper a news story involving -- telling about a forced landing or crash landing of an airplane --

A Yes.

Q -- carrying Mr. Creech?

A Yes.

Q You did read that story?

A Yes.

Q Do you recall what newspaper you read it in?

A In the Statesman.

Q Would you tell us, please, the highlights of that story as best you can recall.

A Well, they were taking Mr. Creech down to locate some bodies in California.

Q Who was taking him?

A Ada County Sheriff, Chuck Palmer.

Q For what purpose were they trying to locate the bodies; do you know?

A Because Mr. Creech said they were there.

MR. HOWER: Challenge for cause, Your Honor.

MR. REMAKLUS: I would not resist the challenge, Your Honor.

THE COURT: Let me ask you -- you say you don't resist?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. REMAKLUS: No, Your Honor.

THE COURT: Let me ask you a couple more questions,  
Mr. Scharen.

Have you read any other stories in the similar  
vein, not about an air crash, but --

THE WITNESS: Yes, I have.

One I remember was -- particularly, was Wyoming  
because I am from Wyoming.

THE COURT: You remember specifically a story about  
Wyoming?

THE WITNESS: Yes -- well, I remember parts of it, just  
the highlights.

THE COURT: Any others?

THE WITNESS: No.

THE COURT: What do you remember about the story about  
Wyoming?

THE WITNESS: That's what I remember, there was supposedly  
a body there and that they found --

THE COURT: What, if anything, did Mr. Creech have to  
do with the --

THE WITNESS: Well, other than --

THE COURT: -- the story?

THE WITNESS: -- other than what I read in the Statesman  
was that he was supposedly -- knew the body was there.

THE COURT: I see. Have you formed any opinion as to

1 his guilt or innocence based on these stories you've read?

2 THE WITNESS: No, I haven't.

3 THE COURT: You've kept your mind open?

4 THE WITNESS: Yes.

5 THE COURT: But you have been exposed to this kind of  
6 publicity?

7 THE WITNESS: Yes, the formal news media.

8 THE COURT: Do I understand, both Counsel join in the --

9 MR. REMAKLUS: Yes.

10 THE COURT: All right, we'll excuse you, then,  
11 Mr. Scharen and we appreciate your honesty and frankness.

12 This doesn't mean you are shirking your duty in  
13 any way. In fact, you are fulfilling your duty by being  
14 perfectly honest and frank about what you've read about it.  
15 So, we do have another trial scheduled on June the 5th at  
16 10:00.

17 THE WITNESS: On that I will be out of the area. I'm  
18 going to be working in Boise.

19 THE COURT: You'll be out of the county?

20 THE WITNESS: Yes.

21 THE COURT: You'd be excused from jury duty, then, if  
22 you are out of the county, so you won't have to report again.

23 You will be excused at this time.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 THE CLERK: Linda Allen.  
2 MR. HOWER: I believe Linda Allen is the spouse of the  
3 ninth juror, D. B. Allen.  
4 MR. REMAKLUS: I'm sure that's correct.  
5 THE COURT: Duane Allen is the ninth juror.  
6 MR. REMAKLUS: Yes, according to my list.  
7 Well, I would be willing to stipulate she may be  
8 excused.  
9 THE COURT: Mrs. Allen, Counsel have indicated that  
10 Duane Allen, who is also on the jury panel, is your husband,  
11 is that right?  
12 MRS. ALLEN: That's right.  
13 THE COURT: They've agreed that it wouldn't be too good  
14 to have a husband and wife, both, on the jury, so they've  
15 stipulated that you might be excused.  
16 MRS. ALLEN: Thank you.  
17 THE COURT: We will excuse you and thank you for your  
18 appearance.  
19 We do have another trial scheduled on June the 5th  
20 at 10:00 if you will remember that date.  
21 MRS. ALLEN: Okay.  
22 THE CLERK: Bertha Fouch.  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BERTHA M. FOUCH,  
a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Fouch, the examination of jurors has kind of  
been divided into two parts; the first part of which is to  
ask you questions about your exposure to pretrial publicity  
such as news items, television broadcasts and the like and we  
will try to confine our remarks here at the outset to that  
area.

Now, have you read about this in the paper?

A. Yes.

Q And have you seen it on the television news?

A. Yes.

Q Have you been a juror before, Mrs. Fouch?

A. No.

Q If you are selected as a juror the Judge will give  
you the instructions and he'll read the instructions to you  
and that will contain the laws that apply to this case and,  
of course, as a juror you'd be bound to follow those  
instructions.

Now, if you are called as a juror and when you  
receive that instruction, do you think that you could render a

1 fair and -- well, I'm sure among the instructions, Mrs. Fouch,  
2 I'm sure the Judge will advise you that you'd have to base  
3 your opinion and your conclusions whether or not the defendant  
4 is guilty on the evidence that you would see and hear right  
5 here in the courtroom.

6 Now, in view of that, could you separate in your  
7 mind what you might have heard or read about it before and  
8 confine your decision only to the evidence that you would get  
9 here in the courtroom?

10 A. No.

11 Q. You think you have -- do you have -- where have you  
12 picked up ideas about this matter; if, in fact, you have?

13 A. Well, just through the news media.

14 Q. And which one of the news media?

15 A. Well, it's been on television and in the  
16 newspapers.

17 Q. Do you think that that's put you in a frame of  
18 mind that you could not be absolutely fair and impartial and  
19 have an open mind at the outset?

20 A. No, I don't think I could have.

21 MR. REMAKLUS: At this point I would pass this juror  
22 for cause, Your Honor.

23 MR. HOWER: Pass for cause, Your Honor.

24 THE COURT: Just a minute. I'd like to ask you just a  
25 few more questions for the record here, Mrs. Fouch, on that.



1 Do you have an opinion as to the guilt or innocence  
2 of the defendant at this time; based on what you've heard about  
3 the case?

4 THE WITNESS: No, but I have followed it in the  
5 news media.

6 THE COURT: I see. You just don't feel you could put  
7 that out of your mind?

8 THE WITNESS: No, I don't believe I could.

9 THE COURT: Separate that from the evidence that would  
10 be presented here in court?

11 THE WITNESS: Well, I think I would be. I just don't  
12 think I could.

13 THE COURT: Could you tell me what some of the things  
14 are, specifically, that you've read or heard about that's  
15 causing you to have this frame of mind; a little detail as to  
16 what you remember about it?

17 THE WITNESS: Well, I think I just -- the shooting  
18 itself, the people that were killed.

19 THE COURT: Just the events here in Idaho?

20 THE WITNESS: Yes, um-hmm.

21 THE COURT: Nothing beyond that that's affecting your --

22 THE WITNESS: Yes, it does also.

23 THE COURT: What else does?

24 THE WITNESS: Well, just the death of so many people.

25 THE COURT: Okay. When you talk about "many people",

1       what other people are you talking about?

2               THE WITNESS: Well, the, evidently, Nevada and Wyoming.

3               THE COURT: Any others?

4               THE WITNESS: No.

5               THE COURT: Did you read -- do you remember reading

6       anything about a plane crash?

7               THE WITNESS: Yes.

8               THE COURT: Did you have any recollection what was

9       involved in that trip?

10              THE WITNESS: Yes, that they were taking him down to

11       investigate some other, evidently, crimes that had been

12       committed.

13              THE COURT: Are these things part of the factors that

14       are causing you to have the frame of mind you do?

15              THE WITNESS: Yes, they do.

16              THE COURT: And you just don't think you could get

17       those out of your mind at this point and just consider the

18       evidence here alone?

19              THE WITNESS: No, I don't.

20              MR. HOWER: I'm compelled to challenge for cause,

21       Your Honor.

22              MR. REMAKLUS: I'll not resist the challenge.

23              THE COURT: All right. We appreciate your honesty,

24       Mrs. Fouch, and we will excuse you.

25                       We do have another trial scheduled on June 5th

1 that you'll have to report for if you remember that date;  
2 June 5th at 10:00.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you again.

5 THE CLERK: Sherman Hart.

6  
7 SHERMAN L. HART,  
8 a prospective juror herein, having been first duly sworn, took  
9 the stand and testified as follows:

10  
11 VOIR DIRE EXAMINATION

12 BY MR. REMAKLUS:

13 Q Mr. Hart, in the first portion of the jury selection  
14 we're going to attempt to confine our questioning to your  
15 exposure to the news media and to pretrial publicity; I'm  
16 talking about newspaper articles, television, radio broadcasts  
17 and things of that nature.

18 Now, have you heard about this case in the past?

19 A. Yes.

20 Q. And how have you heard about it?

21 A. Primarily newspapers, some television in the  
22 beginning.

23 Q. And how recently have you seen anything about this  
24 in the papers?

25 A. I'd say three or four days ago.

1 Q Um-hmm. And do you remember anything about what  
2 the article said, Mr. Hart?

3 A No, I think it was just more of a notification that  
4 the trial was upcoming. I'm not even sure where I read it  
5 because I -- I didn't pay much attention to it.

6 Q Um-hmm. If, as far as you are concerned, then,  
7 could you go into this trial as a trial juror with an open  
8 mind?

9 A Yes, sir.

10 Q And if you are chosen here as a trial juror the  
11 Judge will give you the instructions as to what the law is in  
12 this case. I'm sure he would instruct you that you have to  
13 base your decision on the evidence that you would see and hear  
14 right here in the courtroom. You would have no difficulties  
15 in doing that in your present frame of mind; would you,  
16 Mr. Hart?

17 A No, I wouldn't have any difficulty.

18 MR. REMAKLUS: I'll pass this juror for cause, Your Honor.

19

20 VOIR DIRE EXAMINATION

21 BY MR. HOWER:

22 Q Mr. Hart, do you recall having read in the newspaper  
23 accounts of a forced landing in an airplane with Mr. Creech  
24 aboard?

25 A Yes.

1 Q Will you tell us what you remember about that story?  
2 A Oh, I was -- yeah, I remember that one too. I was  
3 thinking of where they took the Deputy Sheriff, that was another  
4 case. All I remember was that the plane cracked up and that  
5 no one was hurt.  
6 Q Do you remember who was in the plane besides  
7 Mr. Creech?  
8 A No.  
9 Q Do you remember where the plane was going; or where  
10 it was coming from?  
11 A I think it was going to California.  
12 Q Do you recall anything at all about the purpose of  
13 the trip?  
14 A I believe they were investigating sites of where  
15 some bodies were buried.  
16 Q Do you have any impression from the story, your  
17 memory now as to what Mr. Creech's connection with that was?  
18 A Well, I presumed that it was something that he had  
19 said that caused them to go there to look for the body, yes.  
20 Q And why do you presume they took him with them?  
21 A I have no idea -- yeah, I would presume, then, that  
22 to have him show where the place was.  
23 Q Do you have any thoughts or feelings about how he  
24 might have happened to have been thought to know where the place  
25 was?

1           A     Well, I would presume that he had put them there if  
2 he was going to show them and I don't know whether they found  
3 anything or not.

4           Q     Do you recall reading any other stories in the  
5 newspapers about other crimes or other bodies in other states  
6 to which there was some connection with Mr. Creech?

7           A     Vaguely. I don't remember any particulars.

8           MR. HOWER: I challenge this juror for cause, Your Honor.

9           MR. REMAKLUS: At this point, Your Honor, I'd be -- I  
10 think I'd have to resist the challenge because he hasn't shown  
11 that this is, in any way, causing him any bias or prejudice.

12          THE COURT: You want to question him further?

13          MR. REMAKLUS: Yes.

14  
15                   FURTHER VOIR DIRE EXAMINATION

16          BY MR. REMAKLUS:

17           Q     Mr. Hart, even though you've read these things,  
18 could you separate them from your mind and follow the Judge's  
19 instructions to base your decision in this case on the evidence  
20 that you'd get here in the courtroom?

21           A     I would and, if I may, I may state I do believe in  
22 the United States. We have a law that's almost peculiar to any  
23 other parts of the world; that a man is innocent until he is  
24 proven guilty.

25          MR. REMAKLUS: Fine. I'd pass the juror for cause.

1 THE COURT: Let me just pursue that a moment with you,  
2 Mr. Hart.

3 That is a correct statement of the principle of  
4 our judicial system; one of the unique principles.

5 There's another one coupled with it that is related  
6 to it and that is that a defendant doesn't have to testify or  
7 present any evidence in his own defense if he doesn't feel a  
8 need for it; which means that, as a practical matter, once the  
9 State presented all its evidence and rested that if a juror still  
10 has some doubt in his mind about the guilt, then the defendant  
11 is entitled to be acquitted; even though he doesn't take the  
12 stand, doesn't say a word in his own defense. You understand  
13 that's the net result of these principles?

14 THE WITNESS: Yes.

15 THE COURT: In other words, he doesn't have to present  
16 any evidence to prove his innocence.

17 THE WITNESS: I understand.

18 THE COURT: At least until the State has proven him  
19 guilty beyond a reasonable doubt and, even then, he can stay  
20 silent and not testify and a juror couldn't consider that as  
21 evidence of guilt, you understand that?

22 THE WITNESS: Yes, I do.

23 THE COURT: In view of these things you have heard and  
24 read about this case, do you feel in good conscience you can  
25 apply those principles in this case to Mr. Creech?

1 THE WITNESS: Yes, I do.

2 THE COURT: In other words, as he sits here today you  
3 can say in good conscience that you consider him innocent?

4 THE WITNESS: I can say in good conscience that I don't  
5 know what the situation was because I've never heard any  
6 evidence. All I've read is what was in the newspapers or on  
7 television and I'm accustomed to those being inaccurate.

8 THE COURT: I say the law says that he's innocent, it  
9 doesn't say that you just don't know, the law says he's  
10 innocent and you will give him this benefit of that right now?

11 THE WITNESS: Yes.

12 THE COURT: Okay. And you would decide -- do you feel  
13 that you have the ability to completely set aside and separate  
14 these things you heard from the evidence produced here in  
15 court?

16 THE WITNESS: Yes, I believe so.

17 THE COURT: And you could decide his guilt or innocence  
18 on the evidence presented here in court?

19 THE WITNESS: Yes.

20 THE COURT: All right. I'll deny the challenge.  
21  
22  
23  
24  
25



1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mr. Hart, we're going to have some more questions  
4 that cover other areas and we'll try to keep them brief due to  
5 the lateness of the hour.

6 You live up in McCall, I notice by this form you  
7 sent in, for almost eight years?

8 A Yes.

9 Q You are no longer in business up there for yourself,  
10 then, is that right?

11 A In a sense I am. I'm a real estate salesman and  
12 I do work for a realty company, yes.

13 Q I see that. But, you are no longer in the  
14 coin-op laundry business?

15 A That was -- I have been in construction prior to  
16 this.

17 Q Oh. I see.

18 A That was my wife's business.

19 Q Oh, I see. We've talked about you following the  
20 instructions of the Court as being the law in the case. I  
21 notice down here that you said that you've been in a civil  
22 lawsuit. How long ago was that, Mr. Hart?

23 A Between 1945 and 1950. It was a small claims action.

24 Q That's ancient history, wouldn't make any difference  
25 to you with reference to sitting as a trial juror here in this

1 case, would it?

2 A I don't think so. No.

3 Q I don't either. I just wanted your assurance.

4 A Okay.

5 Q Mr. Hart, have you ever given any consideration to  
6 the death penalty?

7 A Yes, I have, but I understand it's no longer in  
8 force.

9 Q Well, we have that statute in Idaho and I'm sure  
10 that someplace in the course of this trial you are going to be  
11 further instructed by the Court, or learn that there is a  
12 mandatory death sentence for conviction of first degree murder  
13 and the legislature has said that and that's the law, that's  
14 the way it is.

15 Now, that being the case, do you have any opinions  
16 with reference to the death penalty at this time?

17 A I hadn't really thought about it. I have felt that  
18 there -- where the crime involves and requires a death penalty  
19 that I would certainly vote in favor of it.

20 Q And you don't have any fixed opinion opposed to  
21 it or in favor of it, is that right, then?

22 A That's right.

23 Q If the Judge were to ask you, or instruct you, that  
24 as a matter of law you, being a juror, really don't get to set  
25 the penalty; that you are to determine only guilt or innocence.

1 Do you think you could follow that instruction, Mr. Hart?

2 A. Yes, sir.

3 MR. REMAKLUS: It would be difficult to do, but I'm  
4 sure you could, too.

5 I'm going to pass the juror for cause, Your Honor.

6 MR. HOWER: I'll pass this juror for cause, Your Honor.

7 THE COURT: Mr. Hart, we'll ask you to go back to the  
8 American Legion Hall and wait there. Do not discuss the  
9 questioning that you've been subjected to with the other jurors.

10 THE WITNESS: All right.

11 THE CLERK: David Gehrig.

12

13 DAVID R. GEHRIG,

14 a prospective juror herein, having been first duly sworn, took  
15 the stand and testified as follows:

16

17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q Mr. Gehrig, during the first part of your questioning  
20 we're going to attempt to confine our remarks merely to pretrial  
21 publicity, television broadcasts, radio broadcasts or  
22 newspaper coverage that you might have been exposed to.

23 With reference to that, have you heard about this  
24 case before?

25 A. Yes.

1 Q And how have you heard about it, Mr. Gehrig?  
2 A Newspapers and television.  
3 Q And have you made it a point to follow this case in  
4 the paper?  
5 A No.  
6 Q You read about it because it was there, is that  
7 right?  
8 A That's right.  
9 Q I see you've been on a jury before. Has that been  
10 just recently, Mr. Gehrig?  
11 A No, quite a few years ago.  
12 Q Is that long enough ago to where you'd be kind of  
13 starting over again if you were chosen here today?  
14 A Yes.  
15 Q Well, if you are selected -- if you are selected  
16 as a juror, the Judge will read the instructions to you and  
17 the instructions will contain the law as it applies to this  
18 case and you will be bound on your oath to follow the Judge's  
19 instructions.  
20 I'm sure you wouldn't have any trouble doing that,  
21 will you, Mr. Gehrig?  
22 A No.  
23 Q Now, if the Judge instructs you, as I'm sure he  
24 will, that you would have to arrive at your verdict to make up  
25 your mind based solely on the evidence that you would see and

1 hear right here in this courtroom and not on something you  
2 might have read or heard, could you also follow that  
3 instruction?

4 A. Yes.

5 Q. Do you feel that you have an open mind at this  
6 point?

7 A. Yes.

8 Q. And of course that's what we're looking for; 12  
9 people that have an open mind and can you give the defendant  
10 a fair and impartial decision in this case?

11 A. Yes.

12 MR. REMAKLUS: We pass the juror for cause, Your Honor.

13  
14 VOIR DIRE EXAMINATION

15 BY MR. HOWER:

16 Q. Mr. Gehrig, do you recall reading in the newspaper  
17 a story about a forced landing of an aircraft in which  
18 Mr. Creech was a passenger?

19 A. Yes.

20 Q. Do you recall from -- oh, do you recall what  
21 newspaper you read that in?

22 A. The Statesman.

23 Q. The Statesman? Do you recall who was with  
24 Mr. Creech in the airplane?

25 A. Sheriff Palmer from Boise, I believe.

1 Q The Sheriff of Ada County?

2 A Yes.

3 Q Do you have any memory from reading the story as to

4 where the airplane was going, or where it had been?

5 A To the State of California, I believe.

6 Q And what was the purpose of the trip?

7 A I believe they were looking for a body or something

8 that he supposedly knew where it was at, I believe that was

9 the comments of the story.

10 Q Was it your impression from the story that the

11 reason Mr. Creech was along was because he was supposed to know

12 where the body was?

13 A I had that impression, yes.

14 Q At the time you read this story, Mr. Gehrig, did

15 it lead you to any strong impressions or conclusions as to

16 whether or not Mr. Creech might have been criminally involved

17 in the events which led to that body being there in

18 California?

19 A I think I wondered, yes.

20 Q When you read the story, did you believe it as

21 being essentially the truth?

22 A Partially, I believe, yes.

23 Q I mean, did you believe it as being a true story

24 as distinguished, Mr. Gehrig, from being a hoax or a joke?

25 A I never thought it was a joke.

1 Q You thought it was "The McCoy" when you read it?

2 A I would say more, yes. No joke.

3 MR. HOWER: On that record, Your Honor, I challenge this  
4 juror for cause.

5 THE COURT: Want to resist the challenge?

6 MR. REMAKLUS: Yes, I'd like to ask another question or  
7 two if I may, Your Honor.

8

9 FURTHER VOIR DIRE EXAMINATION

10 BY MR. REMAKLUS:

11 Q A few minutes ago I asked if you could separate  
12 this in your mind and render a decision on the evidence that  
13 you would hear in the courtroom.

14 Now, has Mr. Hower's questions caused you to change  
15 your mind any, Mr. Gehrig?

16 A No.

17 Q You think you can still give this defendant a  
18 fair and impartial trial?

19 A I believe so.

20 MR. REMAKLUS: I'd have to resist the challenge,  
21 Your Honor.

22 THE COURT: You want to ask some more questions?

23 MR. HOWER: No, Your Honor.

24 THE COURT: Let me ask a couple of questions, Mr. Gehrig.

25 Do you recall reading any other stories of a

1 similar vein involving Mr. Creech in a similar way?

2 THE WITNESS: No, we stopped taking the newspaper for  
3 quite awhile until just recently and, so --

4 THE COURT: When have you seen any stories about this  
5 case recently, then?

6 THE WITNESS: No, just the one about the airplane.

7 THE COURT: You haven't seen any within the last five  
8 days, say?

9 THE WITNESS: No, not that I remember.

10 THE COURT: Do you have any recollection from this  
11 story about the airplane whether or not they were ever  
12 successful in finding anything?

13 THE WITNESS: I believe they were unsuccessful.

14 THE COURT: Unsuccessful?

15 Do you attach any significance to that story;  
16 taking the whole story into account that reflects on the  
17 guilt or innocence of the defendant here in this trial?

18 THE WITNESS: To a certain extent I think it would have  
19 some bearing.

20 THE COURT: I see. But, you are saying that you could  
21 set that aside?

22 THE WITNESS: I believe I could.

23 THE COURT: In our system of law, Mr. Gehrig, we have  
24 two related principles that every defendant charged with a  
25 crime has the benefits of. One is that he's presumed to be



1 innocent. That means as Mr. Creech sits there today the law  
2 considers him just as innocent of this crime as you or I as we  
3 sit here.

4 Are you able, in spite of what you read and heard  
5 about this, to give him the benefit of that?

6 THE WITNESS: I believe I could.

7 THE COURT: The other side of that principle is that  
8 he doesn't have to present any evidence to establish his  
9 innocence. The burden is on the State to prove him guilty  
10 beyond a reasonable doubt and he doesn't have to come forth  
11 with anything. You understand that?

12 THE WITNESS: Yes.

13 THE COURT: The net effect of this is, Mr. Gehrig, that  
14 after the State has rested their case you, as a juror, would  
15 still entertain some doubt in your mind, a reasonable doubt  
16 about the guilt of the defendant here based on that State's  
17 evidence, you would have to acquit him and find him not guilty,  
18 even though he didn't take the stand or present a shred of  
19 evidence. You understand that?

20 THE WITNESS: Yes.

21 THE COURT: And do you feel you could do that?

22 THE WITNESS: I believe I could.

23 THE COURT: I'll deny the challenge.  
24  
25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mr. Gehrig, we have a few more questions. I'm  
4 sure with the late hour they are going to be brief.

5 You've lived in McCall now for about 12 years?

6 A. Yes.

7 Q I see you worked there at the mill until your  
8 retirement?

9 A. Yes.

10 Q And you served on a jury before in 1963 it says.

11 A. I believe it was, yes, um-hmm.

12 Q That was a civil-type thing. That's been so long  
13 ago that it wouldn't make any difference here in this trial,  
14 would it?

15 A. No, it was a traffic charge is what it was,  
16 citation.

17 Q Um-hmm. Nothing about that that gives you any --  
18 I mean, that's ancient history, I assume?

19 A. Yes, that's right.

20 Q Um-hmm. Have you ever given any consideration to  
21 the death penalty, Mr. Gehrig?

22 A. I wondered about it a lot of times.

23 Q I'm sure we all have. Have you arrived at any  
24 conclusions about it?

25 A. I don't really think it's necessary.

1 Q Now, if during this trial you are -- do be  
2 instructed or determine that the -- that as a matter of fact  
3 the law in Idaho is -- as established by the legislature,  
4 that the punishment for first degree murder is a mandatory  
5 death sentence, that is the law. I'm sure you are going to  
6 be so advised by the Judge. Now, is this going to affect your  
7 judgment as a juror in arriving at guilt or innocence, that's  
8 your decision.

9 A Not the guilt part, no. I don't think so, but  
10 in my mind I would think it wasn't fair if the death penalty  
11 was prescribed.

12 Q This is kind of a confusing thing in the law  
13 because I'm sure, as another one of the instructions you'll  
14 get -- you'll be instructed that the penalty is up to the  
15 people, to someone else and not up to you as a juror.

16 A Um-hmm.

17 Q And, yet, you are going to be possessed of this  
18 knowledge that you are going to be instructed to keep them  
19 separate in your mind and not let knowledge of the death  
20 sentence interfere with, or influence, your judgment when you  
21 consider the evidence that's produced and it -- are you sure  
22 of that in your own mind; that you can give them a fair shake  
23 on that basis?

24 A Yes, I think so.

25 MR. REMAKLUS: We'll pass the juror for cause.

1 MR. HOWER: I'll pass the juror for cause, Your Honor.

2 THE COURT: Mr. Gehrig, we'll ask you to go back to the  
3 American Legion Hall and wait there. We will ask you not to  
4 discuss the questioning with any of the other jurors.

5 THE WITNESS: Right.

6 THE CLERK: Paul Wilde.

7

8 PAUL F. WILDE,  
9 a prospective juror herein, having been first duly sworn, took  
10 the stand and testified as follows:

11

12 VOIR DIRE EXAMINATION

13 BY MR. REMAKLUS:

14 Q Mr. Wilde, examination of jurors in this case has  
15 been kind of divided into two parts and the first part has to  
16 do with whether or not you've been exposed to pretrial  
17 publicity and I'm talking about news broadcasts, newspaper  
18 articles, you know, broadcasts of radio and television,  
19 conversations you may have overheard and things of that nature.

20 Now, bearing that in mind, I assume you've heard  
21 some of this case before?

22 A Yes.

23 Q And how have you heard of it before, Mr. Wilde?

24 A Oh, you mean what's happening now?

25 Q Well, no. Have you heard about the case here

1 before trial in the last few days?

2 A. No.

3 Q. And you haven't seen it in the news broadcasts of  
4 that?

5 A. No, not before I was called up I haven't.

6 Q. How about since you were called in the last few  
7 days?

8 A. No.

9 Q. And read any newspaper articles about it?

10 A. No.

11 Q. Are you working now? Like, would you have worked  
12 today if you hadn't been down here?

13 A. Yes.

14 Q. Now, on the form that you, you know, replied to,  
15 that was sent to you, you stated that you've never had -- never  
16 been a juror before.

17 A. That's right, I haven't.

18 Q. Now, if you were to be selected as a trial juror  
19 in this case, the Judge is going to instruct you as to what  
20 the law is and you'll be obligated to follow his instructions  
21 as to what the law is in this case.

22 Now, if he -- if, as I'm sure he will instruct you,  
23 that you must make up your mind as to guilt or innocence, you'll  
24 have to do so based only upon the evidence that you would see  
25 and hear right in this courtroom.

1 Now, would you have any difficulty doing that,  
2 Mr. Wilde?

3 A. No.

4 Q. You've got an open mind at this point; haven't you?

5 A. Yes.

6 MR. REMAKLUS: I would pass the juror for cause.

7  
8 VOIR DIRE EXAMINATION

9 BY MR. HOWER:

10 Q. Mr. Wilde, do you recall reading any newspaper --  
11 an account of an airplane forced landing or crash in which  
12 Mr. Creech was involved?

13 A. I don't remember reading it. Of course, I've  
14 been out of town. I just got back into town.

15 Q. Do you remember hearing talk about it?

16 A. Yes, I've heard -- I remember some talk now, yes.

17 Q. Was the talk you heard about it, Mr. Wilde, from  
18 sources that you consider reliable?

19 A. I shouldn't say.

20 Q. What I'm trying to get at is, do you believe that  
21 what you heard was true; not that the fact was true, but that  
22 the story really did report this?

23 A. Yes. I would have to say so.

24 Q. You would have to say you do? Would you tell us,  
25 please, as best as you can remember from the accounts you

1 heard about what was reported to have happened?

2 A. All I remember that the plane crash landed but I  
3 couldn't tell you where because I don't remember.

4 Q. Could you tell us where it was supposed to have  
5 been reported going to or coming from?

6 A. I believe Boise, anyway that's the way I think I  
7 may have --

8 Q. Boise on one end, any destination or starting  
9 point on the other end --

10 A. No.

11 Q. -- besides Boise?

12 A. No.

13 Q. Do you have any recollection, Mr. Wilde, as to  
14 who was supposed to have been in the plane besides Mr. Creech?

15 A. As I understood the Sheriff, Adams County Sheriff,  
16 that's all.

17 Q. Is that your only or best recollection?

18 A. Yes, um-hmm.

19 Q. Do you have any recollection as to what the  
20 purpose of the trip was reported to be?

21 A. I couldn't say for sure.

22 Q. Could you say, according to your best recollection?

23 A. I can't remember if it was -- if I heard exactly  
24 what it was for.

25 Q. All right. Mr. Wilde, do you recall reading any

1 newspaper stories in which there were accounts of crimes or  
2 murders or bodies being searched for in other states and linking  
3 Mr. Creech with those events?

4 A. There, now, I do kind of remember something but I  
5 couldn't say where they were or who they were or nothing about  
6 it.

7 Q. From the sum total, Mr. Wilde, of all that you have  
8 heard in the way of conversation and all that you have read and  
9 seen on television about Mr. Creech, do you now, at this  
10 moment, have an impression that he is responsible for serious  
11 crimes in other states as well as in Idaho?

12 A. I'm kind of open minded about it. I guess I'll  
13 have to be truthful and say well, in a way, I do, but I haven't  
14 -- I don't know the evidence. I haven't heard anything other  
15 than that.

16 Q. Insofar as you are concerned, it's nothing more  
17 than an impression?

18 A. Yes.

19 Q. Okay. Now, I want to ask you if you are confident  
20 that you could overcome that impression entirely so that if you  
21 sat as a juror on Mr. Creech's case in this trial and at the end  
22 you were making your determination as to whether you were  
23 convinced beyond a reasonable doubt that he hadn't committed  
24 these offenses that he's here charged with, are you confident  
25 that you would make exactly the same decision as if you hadn't



1 heard or read anything about the case before you came here?

2 A. I believe I would.

3 Q. You would exclude every piece of knowledge or  
4 information that's now in your mind?

5 A. I'd try to, yes.

6 Q. It wouldn't affect you?

7 A. The way I'm thinking right now, yes.

8 MR. HOWER: Pass this juror for cause, Your Honor.

9

10 FURTHER VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q. Mr. Wilde, we'll proceed to the next part of the  
13 questions and these are, I think, cover a wide range of things.

14 Have you ever thought anything about the death  
15 penalty?

16 A. Yes, I have.

17 Q. Have you arrived at any conclusions about it?

18 A. No, I couldn't say that I really have.

19 Q. Would you tell me some of your thoughts on the  
20 death penalty, Mr. Wilde?

21 A. No, if they are guilty, the death penalty -- or I  
22 believe if they find them guilty --

23 Q. Well, maybe I could make my question a little bit  
24 more specific and easier to answer.

25 Do you have any fixed opinion about the death

1 penalty?

2 A. Yes, I would have.

3 Q Do you have any -- well, what is your opinion,  
4 Mr. Wilde?

5 A. I believe they should -- there should be a death  
6 penalty.

7 Q Now, if you learned during the course of the trial  
8 or if His Honor instructs you that the legislature has set the  
9 penalty for first degree murder in Idaho as death, is this going  
10 to affect your judgment in arriving at a decision of guilt or  
11 innocence in this case; based on the evidence?

12 A. I think it would.

13 Q Well, let me ask you this: There's a lot of law  
14 that you will be instructed and -- you are going to know that  
15 the penalty for first degree murder is death in Idaho.

16 I'm sure His Honor will also instruct you that as a  
17 juror the penalty is not to be set by the jury; that that's  
18 already been established by law so that the penalty that the  
19 jury has nothing to do with setting the penalty. Do you  
20 understand me? Do you follow me, Mr. Wilde?

21 A. Yes, um-hmm.

22 Q Now, I know that this is a difficult demarcation  
23 for anybody to make, you know. You are instructed to arrive at  
24 a decision based on the evidence, regardless of the penalty and  
25 at the same time you are going to know what the penalty is.

1                   Now, I'm going to ask you if, under those  
2 conditions, you can give this defendant a fair and impartial  
3 trial?

4           A.     I believe I could.

5           MR. REMAKLUS: I'm going to pass the juror for cause,  
6 Your Honor.

7           MR. HOWER: Pass for cause, Your Honor.

8           THE COURT: Mr. Wilde, we'll ask you to go back to the  
9 American Legion Hall and wait there and you are not to discuss  
10 the questioning with the other jurors that you've had.

11                   As I have previously indicated I will make a formal  
12 minute entry at this time and direct the Clerk to enter in the  
13 minutes a finding that, in my opinion, this case will be a  
14 protracted one and for that reason substitute jurors are  
15 necessary and I would propose and find that we need two  
16 additional jurors as substitutes of alternate jurors.

17           MR. HOWER: What's the situation with respect to  
18 preemptory challenges?

19           THE COURT: Each side will have two preemptory challenges.  
20 Have all the challenges for cause, of course, that any juror  
21 that's drawn as an alternate juror can be challenged for cause  
22 as regular jurors, but only two preemptory challenges per side.

23           MR. HOWER: And the Court is aware that I intend to make  
24 a motion? I would suggest to the Court that I'm prepared to  
25 make that motion at this time on the basis of the present

1 record.

2 THE COURT: Well, since we have a jury waiting, I don't  
3 want to take time to entertain motions at this point. I think  
4 it would be appropriate after we finish selecting the jurors  
5 because there is one slight problem our Criminal Rules haven't  
6 covered the picking of an alternate juror. Generally the  
7 statute is more specific. The statute provides that the jurors  
8 must be drawn from the same source and same manner and have  
9 the same qualifications as the jurors already sworn.

10 The statute indicates that you don't pick the  
11 alternate jurors until the regular jurors are impaneled and  
12 sworn. That creates a very serious practical problem in any  
13 case, but more so in a case here in this county where we have  
14 distances involved. This would mean that we couldn't swear  
15 and impanel the regular jury tonight because once they are  
16 sworn and impaneled they couldn't go home and get their things.

17 So, we would have to postpone the swearing of the  
18 -- impaneling until the morning and, then, we couldn't pick the  
19 alternate jurors until that had been done. Then, the  
20 alternate jurors would have to go home and get their things;  
21 which is rather inconvenient.

22 In the past Counsel have been willing to stipulate  
23 that the alternate jurors would be picked at the same time as  
24 the regular panel. I'm not trying to force Counsel to -- I'll  
25 make the decision if I have to.

1 MR. REMAKLUS: The State would so stipulate, Your Honor.

2 MR. HOWER: Would the Court restate the stipulation,  
3 please.

4 THE COURT: Simply that we can go ahead and pick the  
5 alternate jurors now without first impaneling and swearing of  
6 the regular panel.

7 MR. HOWER: May I have just a moment, please.

8 THE COURT: Yes. That's 19-1904 if you want to check  
9 that.

10 MR. HOWER: I'm looking at the rule. I take it that  
11 if there's a conflict the Rule supercedes the Statute.

12 THE COURT: Yes, the Rule simply isn't too specific.  
13 It's Rule 24.

14 MR. HOWER: May it please the Court. I will agree to  
15 the stipulation.

16 THE COURT: All right. So we have an understanding,  
17 then, the two preemptory challenges by the sides can only be  
18 used as to alternate jurors, not for the regular panel.

19 Draw another name.

20 THE CLERK: Matt Wallace.

21

22

23

24

25

1 MATT WALLACE,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. Wallace, we're going to ask you some questions  
8 here beginning with questions regarding pretrial publicity and  
9 I'm referring to newspaper articles, and television and  
10 radio broadcasts and things of that nature.

11 Now, have you had knowledge of this case other  
12 than being summoned to serve as a juror?

13 A Well, yes.

14 Q And how have you obtained that knowledge,  
15 Mr. Wallace?

16 A Well, the accounts in the newspaper and the news  
17 on TV and radio.

18 Q And have you been reading the paper, the daily  
19 paper up until the Judge instructed you not to?

20 A Yes.

21 Q Did you see Sunday's, Monday's paper?

22 A Sunday's paper.

23 Q Do you remember what was in those papers?

24 A Not word-for-word, just read it in passing.

25 Q Did you make it a point to follow this case,

1 Mr. Wallace?

2 A. Not particularly, no.

3 Q. If there was an article there you read it like you  
4 read the other items in the paper?

5 A. Yeah, I didn't read all the articles that came down  
6 the line, but sometimes there was more important things I'd  
7 read and time don't permit the reading of the whole thing.

8 Q. Yes, I understand, Mr. Wallace.

9 I notice that you have never -- oh, you've never  
10 been a juror before?

11 A. No.

12 Q. Have you ever been called?

13 A. Yes.

14 Q. Have you been questioned as a prospective juror  
15 here recently?

16 A. Yes.

17 Q. Get to the point where you were advised that the  
18 Judge would give you -- read you the instructions and you'd  
19 have to follow his instructions as to the law?

20 A. Yes.

21 Q. So, that's fresh in your mind; isn't it, Mr. Wallace?

22 Now, if the Judge instructs you in this case as  
23 I'm sure he will, that you would have to base your opinion or  
24 arrive at your decision only on the evidence that would be  
25 produced here in the courtroom and without regard to anything

1 that you may have heard or read about this matter, now, could  
2 you do that fairly and honestly, Mr. Wallace?

3 A. Probably. I suppose I don't know for sure.

4 MR. REMAKLUS: I'm going to pass the juror for cause,  
5 Your Honor.

6 MR. HOWER: I'll pass for cause, Your Honor.

7 THE COURT: Mr. Wallace, I'd just like to explore for a  
8 little bit the question that might appear to have a little  
9 question in your mind.

10 Can you tell me, first, any facts that stand out  
11 in your mind that you've read in the newspaper accounts or  
12 heard in the newspaper stories that, say, make -- you say you'd  
13 try, but you don't know for sure.

14 THE WITNESS: Well, I would say newspaper and I've heard  
15 a little talk about it, you know, from different --

16 THE COURT: I was wondering what facts you've heard;  
17 either read in the newspaper or what facts you've heard talked  
18 about, the specifics.

19 THE WITNESS: The primary thing that sticks in my mind,  
20 there are other cases besides this.

21 THE COURT: Other cases?

22 THE WITNESS: Other accidents in the same case, you  
23 might say.

24 THE COURT: Is that relating to other states, you mean?

25 THE WITNESS: Yeah.



1 THE COURT: Can you give me a little more idea of what  
2 you read or heard about those?

3 THE WITNESS: Well, it's more a matter of probably, I  
4 don't remember exactly when, but we was presented with a --  
5 flying club, a presentation of the McCall Police Department  
6 and after the meeting there was a discussion about this  
7 particular case, you know, and I don't remember who it was;  
8 one of the officers mentioned a number of people, you know,  
9 that was supposed to be tied in with this case as related to  
10 different states, you know, where they found --

11 THE COURT: Found other --

12 THE WITNESS: -- bodies and stuff.

13 THE COURT: Other bodies?

14 THE WITNESS: Yeah.

15 THE COURT: Do you recall reading an article about a  
16 plane crash that the defendant was involved in?

17 THE WITNESS: No.

18 THE COURT: You don't recall that article?

19 Under our system of justice, Mr. Wallace, the  
20 defendant is presumed to be innocent which means, regardless  
21 of what you've heard or read about this case you have to afford  
22 him that recognition that he's just as innocent as you or I  
23 are as he sits here today and he doesn't have to produce any  
24 evidence to prove his innocence. The State has to prove him  
25 guilty beyond a reasonable doubt. Do you think you could

1 afford this defendant, in good conscience, these rights?  
2 THE WITNESS: Well, I'm not sure that I could, no.  
3 THE COURT: You think you would, perhaps, require some  
4 evidence on his part to prove his innocence?  
5 THE WITNESS: I think it's quite possible, yes.  
6 THE COURT: You are not sure you would be -- completely  
7 block these things you've heard out and leave it completely  
8 up to the State?  
9 THE WITNESS: Well, right now I don't. With what I  
10 know at the moment, no.  
11 THE COURT: Counsel want to examine further?  
12 MR. HOWER: I don't, Your Honor.  
13 MR. REMAKLUS: No, Your Honor. Thank you.  
14 THE COURT: Counsel still want to pass?  
15 MR. REMAKLUS: Yes.  
16 THE COURT: Waive any challenge?  
17 MR. HOWER: Yes, I do, Your Honor.  
18 THE COURT: All right, you may go back to the American  
19 Legion Hall, Mr. Wallace, and ask you not to discuss with the  
20 other jurors the questions.  
21 THE WITNESS: Okay.  
22 THE COURT: State's first preemptory, then.  
23 MR. REMAKLUS: When do we seek --  
24 THE COURT: Well, if you want these both seated --  
25 MR. REMAKLUS: No, this is fine, thank you.

1 THE COURT: Draw another name.

2 THE CLERK: Barbara Hall.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

BARBARA R. HALL,

a prospective juror herein, having been first duly sworn, took  
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Hall, our first questions are going to be  
regarding the news coverage, newspaper articles, and radio  
announcements and television news items and things like that.

Now, have you heard of this matter before you were  
summoned in here to be, you know, to answer the jury call?

A. Yes.

Q And how have you heard about it?

A. Through the newspaper and over the radio.

Q Did you make any particular point of following the  
Creech case in the papers?

A. Well, just reading the newspaper, I mean, I would  
read it, but ---

Q If there was a news article there you would read  
it the same as any other news article; is that what you are  
saying?

A. Yes.

1           Q     Is that the same way with reference to something  
2 over the radio, a news item or the television?

3           A     Yes. If it's on, you would listen to it and get  
4 the local news and --

5           Q     You didn't make any particular point of following  
6 this case, then, did you?

7           A     No.

8           Q     I'm looking at your questionnaire, you know, that  
9 you returned.

10                  You said that you've never been on a jury before.  
11 I was wondering, have you been called down here and have you  
12 been questioned as a prospective juror before?

13          A     No.

14          Q     Mrs. Hall, in a criminal case like this the Judge  
15 will read the instructions to the jury and they must accept  
16 what he reads as being the law and, if you take an oath as a  
17 juror you take an oath to follow the Judge's instructions as  
18 being the law in this case. Would you have any trouble doing  
19 that; following the Judge's instructions?

20                  In other words, he's going to read the instructions  
21 to you and he will tell you what the law is in that particular  
22 case. Now, you'd be willing to follow the Judge's instructions  
23 in that regard; would you not?

24          A     Well, may I answer that I sort of have a biased  
25 opinion. I mean, this -- this is my own opinion, but I --

1 maybe I'm not answering the question.

2 Q That's all right, go ahead, Mrs. Hall, and express  
3 yourself. That's fine.

4 A Well, I have this opinion and I thought it over  
5 in my mind and I still can't change it and --

6 Q Now, let me ask you a question or two, without  
7 revealing your opinion, but, does your opinion have to do with  
8 the guilt or innocence of the defendant?

9 A Yes.

10 Q Is that a fixed and firm opinion that you now  
11 have?

12 A Yes.

13 MR. REMAKLUS: I would ask that Mrs. Hall be excused  
14 for cause, Your Honor.

15 MR. HOWER: No exception, Your Honor.

16 THE COURT: Let me just pursue this a little bit further,  
17 Mrs. Hall.

18 Can you tell me what you heard or read that has  
19 caused you to have this opinion; maybe some of the details that  
20 you remember or that stand out in your mind that are causing  
21 this opinion.

22 THE WITNESS: Well, when I read the newspaper, and this  
23 was, of course, a year ago --

24 THE COURT: What I'm trying to get at is, what did you  
25 read in the newspaper that still sticks in your mind that's

1 causing you to have -- I'm wondering, to your best memory just  
2 tell me what you read that's causing you to have this opinion.  
3 THE WITNESS: That the crime was committed and that  
4 the gentleman was picked up and, I just -- I have this feeling  
5 and I've --  
6 THE COURT: Have you read anything else that's caused  
7 you to reinforce that feeling in any way?  
8 THE WITNESS: No, I haven't.  
9 THE COURT: Do you recall reading stories about a  
10 plane crash; either --  
11 THE WITNESS: A couple of weeks ago.  
12 THE COURT: -- a forced landing that he was involved  
13 in?  
14 THE WITNESS: A couple weeks ago, yes, I did read  
15 something to that effect, but at that time it didn't --  
16 THE COURT: Do you have any recollection of what was  
17 involved in that or what that was about?  
18 THE WITNESS: No.  
19 THE COURT: Do you remember where they were going or  
20 where they were coming from?  
21 THE WITNESS: As I recollect, it was to California and  
22 whether --  
23 THE COURT: Do you remember any statement in the story  
24 about the purpose of the trip?  
25 THE WITNESS: I had heard that there was something that

1 they were going to go check on and, of course, at that time  
2 it meant nothing to me, really.

3 THE COURT: Have you had -- heard, do you remember  
4 reading or hearing about other stories of a similar vein that  
5 were involved going into other states?

6 THE WITNESS: Just what had been issued in the papers  
7 of --

8 THE COURT: What was that?

9 THE WITNESS: Well, of different bodies that were  
10 found and this was in the paper quite some time ago.

11 It's been months ago that this was brought up in  
12 the paper.

13 THE COURT: Do you remember reading something about  
14 that?

15 THE WITNESS: Yes. I glanced through the paper and  
16 when I found something of interest, yes.

17 THE COURT: Have you read any recent articles within  
18 the past week?

19 THE WITNESS: I glanced at the paper that was put out  
20 last Sunday and it was just, more or less, a rehash of what  
21 had been in the paper and I was busy at the time and I didn't  
22 even finish reading it.

23 THE COURT: You just considered it a rehash of what you  
24 had already heard before?

25 THE WITNESS: Yes.

1 THE COURT: All right, I'll grant the challenge.

2 We appreciate your frankness, Mrs. Hall, and we'll  
3 excuse you. We do have another trial **scheduled** on June 5th  
4 at 10:00. You'll have to return at that time. You can go  
5 now.

6 THE WITNESS: Will I get anything in the mail or --

7 THE COURT: No, you'll just have to remember it.

8 THE WITNESS: Just have to be here at 10:00?

9 THE COURT: Unless you hear from the Clerk that the  
10 case is cancelled or something like that you'll just have to  
11 remember to be here at 10:00 on June the 5th.

12 THE WITNESS: Okay, fine.

13 THE CLERK: Luella Snapp.

14

15 LUELLA A. SNAPP,

16 a prospective juror herein, having been first duly sworn,  
17 took the stand and testified as follows:

18

19 VOIR DIRE EXAMINATION

20 BY MR. REMAKLUS:

21 Q Mrs. Snapp, we wish to ask you some questions  
22 about the newspaper articles, radio and television broadcasts  
23 and any conversations, perhaps, that you have overheard or  
24 maybe have engaged in here concerning the Creech matter.

25 Now, have you been aware of this case prior to



1 being called as a prospective juror?

2 A. Yes.

3 Q. And how have you heard about it, Mrs. Snapp?

4 A. Well, newspaper and on TV.

5 Q. And have you happened to read recent accounts of  
6 it in the paper?

7 A. Yes.

8 Q. And how recent; do you remember when it was the  
9 last time you read the paper?

10 A. The first of the week.

11 Q. I notice here in your juror questionnaire that you  
12 filled out and signed and sent back that you've never been a  
13 juror before?

14 A. No.

15 Q. Now, if you are selected as a juror here in this  
16 case the Judge will instruct you as to what the law is and  
17 you must follow his instructions. Do you understand what  
18 I'm getting at?

19 A. Yes, um-hmm.

20 Q. Now, if the Judge does instruct you and I'm sure  
21 he will, that you must base your opinion or your decision  
22 in this case solely on the evidence that would be produced  
23 here in the courtroom, could you separate anything that you  
24 might have read or heard about this before from the evidence  
25 that you would hear right here in the courtroom and base your

1 decision only on this evidence?

2 A. I think so, yes.

3 MR. REMAKLUS: Pass the juror for cause, Your Honor.

4 MR. HOWER: Pass for cause, Your Honor.

5 THE COURT: Do you want to examine for further grounds?

6 MR. REMAKLUS: Yes, only a question or two.

7

8 FURTHER VOIR DIRE EXAMINATION

9 BY MR. REMAKLUS:

10 Q Mrs. Snapp, have you ever given any consideration  
11 to the death penalty in a criminal case?

12 A. No, I never thought about it too much.

13 Q Do you have any opinion about the death penalty in  
14 a criminal case?

15 A. Well, I don't know.

16 Q You've never had occasion to give it much thought;  
17 have you, as a matter of fact?

18 A. No, I never had anything to do with it or --

19 Q Now, if the Judge were to instruct you, or you were  
20 to be advised that, during this trial, that the punishment for  
21 first degree murder is the mandatory sentence of death, and,  
22 then, you wind up here as a trial juror, do you think that you  
23 could fairly and impartially make a decision on the evidence  
24 produced here in the courtroom; knowing that a death penalty  
25 would be involved?

1 A. I don't know.

2 Q You know there's another instruction, I'm sure the  
3 Judge will give and it's going to make it even more confusing,  
4 Mrs. Snapp; you'll be instructed that, as a juror, of course, it  
5 will be your function to determine the fact, you know, guilty or  
6 not guilty.

7 A. Um-hmm.

8 Q But, you'll also be instructed that the matter of  
9 penalty is not to be considered by you; that you are merely to  
10 confine your deliberations to guilty or not guilty and at the  
11 same time you are going to know there's a death penalty involved.

12 Now, do you think that you could separate the two  
13 and arrive at a decision based upon the evidence?

14 A. I'm not sure. I don't know for sure.

15 Q Do you think that there being a death penalty  
16 involved would prevent you from finding a verdict of guilty;  
17 even though you thought he was, in fact, guilty?

18 A. I think it would be true.

19 Q You think whether he's guilty or not you are not  
20 going to find him guilty because of the death penalty; is that  
21 a fair statement?

22 A. Yes.

23 MR. REMAKLUS: I'd ask that Mrs. Snapp be excused,  
24 Your Honor.

25 THE COURT: Wish to question her?

1 MR. HOWER: No exceptions, no questions, Your Honor.

2 THE COURT: All right. You will be excused, then,  
3 Mrs. Snapp. I appreciate your appearance here, you will have to  
4 appear again on June the 5th at 10:00 for another trial.

5 THE WITNESS: Okay.

6 THE COURT: If you will remember that, please.

7 THE WITNESS: Um-hmm.

8 THE CLERK: William Davis.

9  
10 WILLIAM H. DAVIS,  
11 a prospective juror herein, having been first duly sworn, took  
12 the stand and testified as follows:

13  
14 VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16 Q Mr. Davis, we're going to ask you some questions  
17 and try to confine it, at this point, to what we refer to as  
18 pretrial publicity; talking about newspaper articles, radio and  
19 TV and things like that.

20 Now, have you heard about this matter before you  
21 were summoned here as a prospective juror?

22 A Yes, sir.

23 Q And how have you heard about it?

24 A I've read it in the paper and on television heard  
25 it.

1 Q And on your questionnaire here you advise that  
2 you've never been a juror before?

3 A No, sir.

4 Q Now, if you are called as a juror in this case the  
5 Judge is going to instruct you as to what the law is and you are  
6 going to have to follow his instructions and if he tells you,  
7 which I'm sure he will in his instructions, that if you are a  
8 juror here you are going to have to base your decision as to  
9 guilt or innocence based only on the evidence that you see and  
10 hear right here in this courtroom. Do you think that you can  
11 fully and fairly do that --

12 A No, sir.

13 Q Follow that insturction?

14 A I can't because of what I've heard and the beliefs  
15 that I have myself.

16 Q You think you have a fixed opinion now?

17 A Yes, sir.

18 MR. REMAKLUS: I'd ask that Mr. Davis be excused.

19 MR. HOWER: No exception.

20 THE COURT: Like to proceed on that just a little bit,  
21 Mr. Davis.

22 Can you tell me what items you've read or heard  
23 that has caused you to have this opinion?

24 THE WITNESS: Yes. The idea of when the people with  
25 information, the witnesses were brought in and the girl that

1 was with the defendant.

2 THE COURT: You read about something about her case?

3 THE WITNESS: Yes.

4 THE COURT: And anything else you've heard about that  
5 is causing you to have an opinion, or read about?

6 THE WITNESS: Lots of people's talk.

7 THE COURT: What did that involve?

8 THE WITNESS: Lots of people that I've talked about it  
9 was convinced that -- about the guilt and, so, I just has -- I  
10 was watching along, I was convinced that there was guilt till  
11 I can't fairly judge.

12 THE COURT: Do you recall reading anything about an  
13 airplane forced landing that the defendant was involved in?

14 THE WITNESS: No, sir, I cannot remember that.

15 THE COURT: Don't remember that incident?

16 THE WITNESS: No.

17 THE COURT: All right, then, we'll excuse you,  
18 Mr. Davis. We appreciate your honesty here. You'll have to  
19 report for another trial on June 5th at 10:00.

20 THE WITNESS: Okay.

21 THE CLERK: Betty Stockton.

22

23

24

25

1 BETTY R. STOCKTON,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mrs. Stockton, we wish to ask you some questions  
8 first of all concerning what you may have or what kind of  
9 pretrial publicity that you may have been exposed to in this  
10 matter.

11 I'm referring to newspaper articles and television  
12 broadcasts and things of that nature.

13 Now, I assume you heard of this matter before you  
14 came down here to report as a prospective juror?

15 A Yes, I have.

16 Q And what were the sources of your information,  
17 Mrs. Stockton?

18 A Well, I heard and read the reports -- well, through  
19 the news media and in the papers of the accused and what was  
20 supposed to have happened with the murders.

21 Q And did you make any particular point to follow  
22 this case?

23 A Well, yes, I did keep up with it.

24 Q And did you look for it in the papers?

25 A Yes, I did.

1 Q And has this caused you to have an opinion in this  
2 matter?

3 A Well, I can say that many years ago I worked as a  
4 clerk in the District Court in Texas and am quite familiar with  
5 indictments and so forth, and I feel that I would have an  
6 opinion, yes.

7 Q Right now, then, you don't feel you -- that you  
8 could put that out of your mind and disregard that if you are  
9 -- were chosen as a juror?

10 A No, I don't think I could.

11 MR. REMAKLUS: We'd ask to have Mrs. Stockton excused.

12 MR. HOWER: I'd like to ask a question or two,  
13 Your Honor.

14  
15 VOIR DIRE EXAMINATION

16 BY MR. HOWER:

17 Q What capacity did you work in the District Court  
18 in Texas, Mrs. Stockton?

19 A I worked as a Deputy District Clerk and I did  
20 courtroom work, sitting in.

21 Q Did you function as a Clerk of the Court?

22 A Yes.

23 Q Where was this?

24 A In Odessa, Texas.

25 Q In Odessa?



1           A.     Um-hmm.

2           Q.     How long did you do this?

3           A.     About four years.

4           Q.     No doubt you've heard these kind of questions, then,

5 many times?

6           A.     Yes.

7           Q.     Are you telling us, Mrs. Stockton, that if

8 admonished by the Judge that you must decide this case on the

9 evidence presented in court and if you tried to do that that

10 you, nevertheless, feel you could not do it?

11          A.     Well, I think I'm feeling that as I had worked in

12 this capacity and as I said with indictments and so forth I

13 don't really think I've known of anyone who was indicted and

14 not been guilty and, maybe, I couldn't put that out of my mind.

15          MR. HOWER: I have no further questions, Your Honor.

16          THE COURT: I just would like to ask you a couple of

17 questions about what you've read.

18                 Is it primarily your court experience or what you

19 have read that have something to do with your opinions?

20          THE WITNESS: I think --- well, maybe both, but, maybe

21 I've not read everything but I have kept up with it in the

22 papers.

23          THE COURT: Can you give me some of the things that

24 stand out in your mind that you have read? Some of the

25 specific items?

1 THE WITNESS: Well, I remember the initial story, it  
2 was rather gruesome.

3 THE COURT: About the incident right here in Idaho?

4 THE WITNESS: Yes.

5 THE COURT: Any other incidents?

6 THE WITNESS: Oh, no other than, like I say, keeping  
7 up with it. You read most of the stories in the paper.

8 THE COURT: Do you remember reading an incident about  
9 an airplane forced landing?

10 THE WITNESS: Yes, recently, within the last couple of  
11 weeks.

12 THE COURT: Do you recall the defendant was involved  
13 in that?

14 THE WITNESS: Beg your pardon?

15 THE COURT: Do you recall if the defendant was involved  
16 in that?

17 THE WITNESS: I believe that's what the newspaper said,  
18 yes.

19 THE COURT: Can you tell me what you remember about  
20 that story; how the defendant was involved?

21 THE WITNESS: I believe he was with some people  
22 stating that he had been involved in some murder, or something,  
23 and they had gone to locate some bodies and this was a crash  
24 landing when someone passed out for lack of oxygen, I believe.

25 THE COURT: Now, have you heard any or read any other

1 stories in that same vein about other incidents; other than  
2 here in Idaho or was that the only one you remember?

3 THE WITNESS: No, I believe I did read that he has  
4 confessed to being involved in several, five, ten, cases or  
5 something like that.

6 THE COURT: We appreciate your frankness here,  
7 Mrs. Stockton. We'll excuse you, then.

8 You'll have to appear again on June 5th at 10:00.  
9 We appreciate your time.

10 THE CLERK: Clifford Fields -- excuse me, he's been  
11 excused.

12 Larry Bouck.

13  
14 LARRY DANIEL BOUCK,  
15 a prospective juror herein, having been first duly sworn, took  
16 the stand and testified as follows:

17  
18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q Mr. Bouck, we want to ask you some questions about  
21 pretrial publicity in this matter. Have you heard about this  
22 case before?

23 A Yes.

24 Q And how have you heard about it?

25 A Through talking to several witnesses and I'm sure

1       they are going to appear in this case.

2               Q     And where were you exposed to witnesses?

3               A     Through business.

4               Q     As a result of that, then, do you have some  
5       fixed ideas?

6               A     Yes, I do.

7               Q     It would take evidence, then, to change your  
8       present frame of mind, is that right?

9               A     Excuse me, I couldn't hear you, Bob.

10              Q     It would take evidence produced here to change  
11       your present frame of mind, is that right?

12              A     Yes.

13              MR. REMAKLUS: I would ask that the witness be excused  
14       for cause, Your Honor.

15              MR. HOWER: No exception.

16              THE COURT: We'll excuse you, Mr. Bouck. We  
17       appreciate your frankness. You'll have to report for another  
18       jury trial on June the 5th at 10:00 if you will remember that.

19              THE WITNESS: Okay.

20              THE CLERK: Arnold Branden.

21

22

23

24

25

1 ARNOLD R. BRANDEN,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. Branden, we want to ask you some questions  
8 concerning pretrial publicity. Have you heard about this matter  
9 before; other than being summoned here as a prospective juror?

10 A Oh, last fall in the papers.

11 Q And have you been following it in the papers lately?

12 A No.

13 Q How about radio and TV?

14 A TV is out. I've -- I guess anything I've heard has  
15 been secondhand.

16 Q And if you've heard any conversations, it's been  
17 from people that they were just talking? They didn't --

18 A Right.

19 Q -- they didn't say that they knew the facts or  
20 anything like that?

21 Mr. Branden, while I'm looking for your sheet here,  
22 have you ever been a juror before?

23 A Oh, back in about 1930, I'd judge.

24 Q Yeah, here it is, says "1932."

25 As far as you are concerned being a juror again here,

1 if you are chosen, now, would be just like starting out all over  
2 again; wouldn't it?

3 A. Right.

4 Q. Now, if you are chosen the Judge will read you the  
5 instructions and the instructions will contain the law as it is  
6 in this case and you've got to follow that. You understand that,  
7 Mr. Branden?

8 A. Yes, um-hmm.

9 Q. Now, if among those instructions, the Judge tells you  
10 and, as I'm sure he will, that you must make your decision, if  
11 chosen as a juror, only on the basis of the evidence that's  
12 produced in this courtroom --

13 A. Right.

14 Q. -- would you have any difficulty in following that?

15 A. No.

16 Q. You've got an open mind right now; haven't you,  
17 Mr. Branden?

18 A. Right.

19 MR. REMAKLUS: Pass this juror for cause, Your Honor.

20 MR. HOWER: Pass for cause, Your Honor.

21 THE COURT: Mr. Branden, you haven't read anything since  
22 last fall?

23 THE WITNESS: Pardon?

24 THE COURT: You haven't read anything about the case  
25 since last fall?

500 BRANDEN, ARNOLD. VOIR DIRE.

1                   You haven't read anything recently within the past  
2 week?

3           THE WITNESS: No, not the last week, ten days or whatever.

4           THE COURT: Go ahead.

5  
6                   FURTHER VOIR DIRE EXAMINATION

7 BY MR. REMAKLUS:

8           Q     Mr. Branden, have you ever given any consideration  
9 to the death penalty?

10          A     Yes.

11          Q     Do you have an opinion on it?

12          A     Yeah.

13          Q     Are you for or against it? What is your opinion?

14          A     I'm for it.

15          Q     Now, sometime during the course of this trial you  
16 are going to learn, or be instructed by His Honor, that there's  
17 a mandatory death sentence for first degree murder in Idaho.

18                 You are also going to be instructed, Mr. Branden,  
19 that as a juror your duty is to find the facts; that is, you  
20 are going -- you are chargeable, your portion of this trial  
21 would be to determine whether or not the defendant is guilty or  
22 not guilty.

23          A     Right.

24          Q     And I'm sure you'd be instructed that the penalty is  
25 not to be considered, or taken into account by you. Now, these

1 are all kinds of conflicting, or confusing things. And in your  
2 own mind can you -- do you think you can separate the fact that  
3 the penalty is not within your power, not within the Judge's  
4 power. It's the legislature that set it, it's the law and that  
5 will have to be set aside and you'll have to make up your mind,  
6 not influenced by that, just on the evidence.

7 A. Oh, yes, I see what you --

8 Q. Yeah.

9 A. Yeah.

10 Q. Can you do that, Mr. Branden?

11 A. Yes.

12 MR. REMAKLUS: I would pass the juror for cause,  
13 Your Honor.

14 MR. HOWER: Pass for cause, Your Honor.

15 THE COURT: We will ask you to go back to the American  
16 Legion Hall and wait there, Mr. Branden. Don't discuss the  
17 questions here that have been asked you with the other jurors.

18 All right, I'm going to ask you to bring all the  
19 jurors back now. That completes the selection of the jury.

20 MR. HOWER: I couldn't understand.

21 THE COURT: I say that completes the selection of the jury  
22 and have all the jurors brought back into the courtroom.

23 (Jury panel re-entered the courtroom.)

24 THE COURT: I'm going to call names of 12 jurors, now,  
25 that should take seats in the jury box.



1           As I call your names and I'll tell you the order in  
2 which you sit.

3           Mr. Paul Wilde, if you'll take seat one on the back  
4 row next to the window; Mr. Earl Dodds, seat two;  
5 Mr. Del Woodward, seat three; Mr. David Gehrig, seat four;  
6 Mr. Sherman Hart, seat five; Mr. Wesley Knee, seat six;  
7 Patricia Guillet, seat seven, that's on this end in the front  
8 row; Sharon Corbin, seat eight next to Mrs. Guillet;  
9 Duane Allen, seat nine; Robert Farnsworth, seat ten;  
10 Sharon Gibbens, seat eleven; Harold Bolt, seat twelve.

11           Matt Wallace, if you'd take the back chair there and  
12 Arnold Branden, front chair.

13           All right, I'll advise you that the jurors sitting  
14 in the regular jury box have been selected to be the trial  
15 jurors in this cause and the two, Mr. Wallace and Mr. Branden,  
16 you've been selected to be substitute or alternate jurors.

17           I'm going to read those jurors that have been  
18 excused on pre-emptory challenges.

19           (Whereupon the names of the jurors excused on  
20 pre-emptory challenges were read by the Court.)

21           THE COURT: All of the jurors that were excused for  
22 cause, as we went through the jury selection process, have been  
23 asked to report again for a trial on June 5th at 10:00.

24           We need 35 jurors for that trial and through this  
25 process we now have 28. We need seven more. I'm going to have

1 the Clerk draw seven names at this time and these names are  
2 for jurors to report on June the 5th at 10:00.

3 So, if you will make note of that, please.

4 (Whereupon the Clerk drew seven more prospective  
5 jurors.)

6 THE COURT: You won't be permitted to separate and go  
7 home once you are sworn to try the cause so we're not going to  
8 try the cause until tomorrow morning.

9 I will ask you, during this evening recess, again,  
10 to abide by the admonition I've given you before; don't discuss  
11 the case among yourselves and don't let anyone approach you and  
12 discuss the case with you. Again, there may be considerable  
13 publicity in the news media about proceedings today here in  
14 court and I'd ask you again, on your honor, not to read any  
15 news articles about the trial or watch any TV or listen to any  
16 radio reports on the trial or proceedings today.

17 You can have your family save up the newspapers if  
18 you want to read these stories after you are all through with  
19 this. Don't read them in the morning or tonight.

20 I am required to give you an admonition that you  
21 will hear, I should repeat it at every recess and I'll give it  
22 to you at this time so you'll be aware of it during this recess  
23 and all further recesses.

24 You are not permitted to discuss the case among  
25 yourselves until the case is finally submitted to you. Likewise

1 you are to keep your minds entirely open and not form an opinion  
2 on the merits of the case until it is fully submitted to you.  
3 Likewise, you shouldn't let anyone approach you and discuss the  
4 case with you during any recess and you should not take any  
5 matters into account in deciding this case except evidence  
6 produced here in open court that is admitted by the Court for  
7 your consideration.

8 As far as not discussing the case among yourselves  
9 and keeping your minds entirely open until the case is fully  
10 submitted to you, I will advise you that the case will not be  
11 fully submitted until you've heard all the evidence produced  
12 by both sides and received the instructions of the Court and  
13 heard the closing arguments of both attorneys and retired to  
14 deliberate on your verdict and that's the first time you are  
15 permitted to discuss the case among yourselves and make a final  
16 decision in your own mind and express that to the other members  
17 of the jury.

18 So, if you will please abide by that admonition at  
19 this and all further recesses and, of course, when you come back  
20 in the morning you will need to come prepared to stay until the  
21 trial is over.

22 I think there has been lodging arranged for you at  
23 the -- in McCall at the Shore Lodge and for the evening and  
24 meals will be furnished to you.

25 You will have to have your personal belongings and

1 things you need to survive for a few days here without being  
2 able to go home.

3 So, we appreciate the patience you've shown in your  
4 -- here in your willingness to serve in this case. If you will  
5 please abide by all these admonitions we'll be in recess until  
6 tomorrow at 10:00.

7 (Whereupon the entire jury panel and jury left  
8 the courtroom.)

9 THE COURT: I think this would be an appropriate time  
10 to hear your motion, Mr. Hower.

11 MR. HOWER: My motion is under Rule 21(a), Idaho Rules  
12 of Criminal Procedure, for a changing of the venue.

13 THE COURT: I'll hear any argument you want to present  
14 on the motion at this time, if you wish to present argument.

15 MR. HOWER: Your Honor, I base the motion on the showing  
16 made by the record so far in this hearing, this cause, that the  
17 defendant cannot have a fair and impartial trial in this  
18 county.

19 THE COURT: Counsel wish to respond?

20 MR. REMAKLUS: Yes, Your Honor, I would certainly resist  
21 this motion upon the grounds and for the reason I don't think  
22 that the record discloses that the defendant cannot have a  
23 fair trial and we have gone through some 70 jurors to arrive  
24 at this decision and get 12 jurors and two alternates who, in  
25 my opinion, have satisfied the requirements of laws to give

1 this defendant a fair and impartial trial by jury. I think we  
2 should proceed.

3 I'd like to point out also that we have made  
4 arrangements to try this case, we're ready to go forward in  
5 an orderly and speedy manner and we're prepared to start  
6 presenting evidence in the morning and to conclude this  
7 matter as early as possible.

8 I would like to point out, Your Honor, that there's  
9 great expense involved, there has been great expense involved  
10 to date and there will be great expense involved in the future  
11 trial. This is one of the situations where we have been  
12 required to have witnesses come from as far away as Baltimore  
13 in the East and, possibly from Portland on the West.

14 I think it would be an undue hardship on our  
15 people, on our taxpayers, to require us and to go through this  
16 exercise again in order to try this case. I'm satisfied in  
17 my own mind that we have a fair and impartial jury and that  
18 they are perfectly competent to render a just verdict in this  
19 case. Thank you.

20 THE COURT: Mr. Hower, I don't know that this is  
21 particularly required, the Rule, of course, doesn't say anything  
22 about -- as to statute, no detail in the Rule if the Court  
23 were to enter such an order, would have to specify the county  
24 to which the venue is changed. Does your motion include any  
25 proposal as to where you were requesting the venue to be changed?

1           MR. HOWER: Until I'm required to include a proposal,  
2 Your Honor, I would prefer not to. I think a good procedure  
3 would be for the -- if the motion is granted, I think a  
4 good procedure would be for the State to conduct some inquiries  
5 in search for an uncontaminated venue in this state if one can  
6 be found. I would then be prepared to supplement the Motion  
7 for Change of Venue by specifying a county if you would want me  
8 to do so. I'd have to do so -- I'm not in possession of  
9 information as to which venues are contaminated and which ones  
10 aren't. I think a study should be made before the Court fixes  
11 a county.

12           THE COURT: I appreciate that based on the grounds you've  
13 heard here. Of course, the grounds would not have existed  
14 earlier but I do note that the Statute, Title 19, Chapter 18,  
15 does prescribe some other formalities for making a motion that  
16 aren't specified in the Rule.

17           I'm going to continue the matter until tomorrow  
18 morning if you want to supplement your motion with any of those  
19 matters; I'm referring to 19-1502 and I'll leave it up to you  
20 if you think that's necessary. But, I'll give you until  
21 tomorrow morning to do that.

22           MR. HOWER: I thank the Court.

23           THE COURT: I will take the matter under advisement and  
24 if Counsel have any additional arguments that you want to  
25 present, or any cases you'd like to refer the Court to, I'd

1     like Counsel to come at 9:30 so, perhaps, we can consider this  
2     matter before the jury comes back.

3             MR. REMAKLUS: Your Honor, before we recess for the  
4     evening I would like to refer to a news item or possession of  
5     a news item appearing in the Monday Idaho Daily Statesman that  
6     evidently purports to quote the Sheriff of this county saying  
7     he's concerned about courtroom security precautions, except to  
8     say that the courtroom will be strictly guarded and access  
9     tightly limited to those who have advance permission to attend  
10    the trial.

11            In view of this, I'm wondering, Your Honor, have  
12    you made any rulings that this is not an open and public  
13    trial and the public are free to come in here and observe  
14    these proceedings?

15            THE COURT: No, I certainly haven't, to answer your  
16    question. In fact, I intend this to be a trial that's open to  
17    the public and, of course, I'll allow the Sheriff to enforce  
18    whatever security measures he feels are necessary. But, as far  
19    as limiting access to people with permission, I wouldn't permit  
20    that. I think the trial will be open to the public. Anyone  
21    who wants to attend, as long as there's seating available,  
22    subject to whatever security precautions the Sheriff feels are  
23    necessary.

24            MR. REMAKLUS: Thank you for that clarification,  
25    Your Honor.

1 THE COURT: We'll be in recess until tomorrow morning  
2 at 9:30 as far as Counsel are concerned.

3 (Evening recess taken.)  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 CASCADE, IDAHO, THURSDAY, MAY 22, 1975, 9:30 A.M.

2  
3  
4 THE COURT: I'd like the record to show that these  
5 proceedings are being taken up outside the presence of the  
6 jury. The jurors have been selected at this time not having  
7 been sworn and impaneled.

8 The matter we have pending before the Court at this  
9 time is a Motion for Change of Venue that was made on behalf  
10 of the defendant prior to our recess last evening. The matter  
11 was continued to this morning for decision and for final  
12 argument on that motion.

13 This is your motion, Mr. Hower, I'll hear any  
14 additional argument you have to make at this time.

15 MR. HOWER: Your Honor, I stayed up a good bit of the  
16 night preparing a written argument on this motion because I  
17 wanted to be precise and say exactly what I mean.

18 I don't usually read argument to the Court but  
19 with the Court's leave, I'll read this as rapidly as I can  
20 and few oratoricals as I can manage.

21 Last night I moved in open court, under Rule 21(a)  
22 of the Idaho Criminal Rules, for a change of venue in this  
23 case. The Court at that time invited argument on the motion,  
24 and set it for hearing at this time.

25 I wish the Court to understand that I am

1 proceeding under the Rule, and not under the statutes relating  
2 to prosecutions under indictment which formerly governed.  
3 The motion is not based upon the defendant's affidavit, which  
4 would be superfluous under the circumstances, but upon the  
5 whole record, including the Court's opening remarks on the  
6 subject of newspaper publicity and the clippings which the  
7 Court then made a part of the record and all of the reports  
8 heretofore made on the case.

9 The Rule provides simply that the Court shall,  
10 upon motion, transfer the proceeding to another county if the  
11 Court is satisfied that a fair and impartial trial cannot be  
12 had in this county.

13 The Rule contemplates, I think wisely, that the  
14 Court will exercise a sound discretion in ruling on the motion,  
15 taking into account all of the known facts and circumstances.  
16 No formula is given for determining whether or not there can  
17 be a fair and impartial trial. It is only if the Court  
18 declines to exercise the discretion vested in it under our  
19 practice and procedure, or is believed to have abused such  
20 discretion, that questions of due process of law arise under  
21 the Federal Constitution. These are discussed, however, in  
22 Irwin against Dowd, 366 U.S. 717.

23 The initial question presented to the Court is  
24 whether or not this venue is contaminated to the point where  
25 a fair trial is impossible. The facts are within the Court's

1 direct knowledge and experience. Either the Court's sense of  
2 justice is outraged by the prospect of a trial under the  
3 conditions presented, or it isn't. This Court has clearly  
4 signaled its concern from the opening moments of these  
5 proceedings, and I know that this concern can only have been  
6 magnified and deepened by what the Court has learned in the  
7 course of two days of questioning of prospective jurors.

8 The controlling fact can be very simply stated. It  
9 is that virtually every prospective juror questioned believes that  
10 the defendant has committed multiple, deliberate, premeditated  
11 and brutal murders in other states, for which he has not been  
12 held to account. These beliefs are based upon newspaper  
13 reports, television or radio broadcasts, or word of mouth  
14 opinion based upon them. The result, and it is an inevitable  
15 result given the demonstrated state of belief, is that the  
16 prospective jurors have prejudged the defendant to be guilty  
17 of the offenses for which he is now on trial.

18 A few jurors have expressed the belief that they  
19 can put the previously received and believed information out  
20 of their minds. Others have indicated only that they will try,  
21 without confidence that it can in fact be done. No one with  
22 the least sophistication in these matters believes for a  
23 moment that such inflammatory and prejudicial preconceptions  
24 can really be set aside, even assuming the best of  
25 intentions, and absolute sincerity, on the part of the juror.

1 Moreover, in an atmosphere of such pervasive bias, prejudice  
2 and hostility as has been demonstrated here, there comes a  
3 time when it must be assumed that some prospective jurors will  
4 conceive it to be their right and duty to conceal or deny their  
5 true feelings, precisely in order to gain a place on the  
6 jury and there insure that justice, according to their lights,  
7 is done. These reactions are perfectly human and understandable,  
8 but to attempt a criminal trial under the conditions which  
9 have provoked them would violate due process of law and mock  
10 justice beyond all rational contemplation.

11 It is fundamental to our law that only such  
12 evidence as is relevant to the offense charged may be  
13 presented on the trial of that offense and considered by the  
14 jury. There are good reasons for this, and those of us whose  
15 profession is justice may sometimes find ourselves in  
16 situations where it is useful to re-think them.

17 For offenses alleged to have been committed at  
18 other times and in other places, the accused is entitled to  
19 a trial at which the facts bearing on those offenses are in  
20 issue. He is entitled to be confronted with the witnesses  
21 against him, to have counsel in a position to investigate  
22 the facts, to invoke the Court's writs in order to obtain  
23 information, physical objects, and testimony needed for his  
24 defense, and to the presumption of innocence.

25 He is entitled to the whole panoply of rights

1 guaranteed by the Fourth, Fifth, Sixth and Thirteenth  
2 Amendments to the Constitution of the United States, and to  
3 many more rights, not so well-known but equally vital, which  
4 are part of the body of law and procedure enunciated and  
5 guarded by the courts themselves. Intense and oftentimes  
6 anguished thought has been given to the definition and  
7 implementation of these rights by members of our profession,  
8 because they can be secured only at the cost of some apparent  
9 short-term sacrifice of other public desires or interests.  
10 But much blood has been shed for them through the centuries.  
11 They are worth defending. They are worth defending even when  
12 they appear to stand in the way of the prompt and  
13 unceremonious hanging of a man who is reported to be a very  
14 bad man.

15 In the administration of justice we go very far  
16 to protect an accused human being from the prejudice which  
17 results if irrelevant and inflammatory information is presented  
18 to the jury. For example, if this defendant, on trial for  
19 first degree murder, were asked by the Prosecuting Attorney,  
20 "Have you ever been convicted of a murder?", the mere asking  
21 of the question would be irrevocable error fatal to the trial.

22 Now, this would be true even if the accused had  
23 voluntarily taken the stand in his own defense, thus  
24 exposing himself to all proper cross-examination. It would be  
25 true even if the accused had in fact committed a murder and

1        been convicted of that offense in an impeccable trial. It  
2        would remain true even if the Judge then and there admonished  
3        the jury, with whatever solemnity, that the question was  
4        improper and that they were not allowed to draw inferences  
5        from it. It is true because the fact of that murder doesn't  
6        prove this murder, because experience teaches that some jurors  
7        will nevertheless conclude that it does, and because of the  
8        final fact that conviction of murder is not a matter to be  
9        taken casually. These principles, and the reasons for them,  
10       have recently been clarified and re-stated by our Idaho  
11       Supreme Court, in State versus Shepherd, 94 Idaho 227.

12                The Prosecuting Attorney has cited this case in  
13       his trial memorandum, and must be presumed to be acquainted  
14       with it. Last Night I was shocked to hear the Prosecutor  
15       say, after listening all day to citizen after citizen give  
16       voice to deep-rooted and ineradicable bias against this  
17       defendant, that he can have a fair and impartial trial in  
18       this county, and that we should go forward because public  
19       money has been spent in preparation for it. I wish  
20       respectfully to suggest that it should be the prosecution  
21       itself moving for a change of venue in the interest of justice.  
22       The State has the higher duty in this matter than to seek a  
23       quick and popular murder conviction at any cost.

24                I would like to add that the principal blame for the  
25       deplorable contamination of this venue rests, in my view, not

1 so much upon the press and other news media as upon the State  
2 itself. It is in the nature of the news media to seek and  
3 publish information. After the very first such publication of  
4 information prejudicial to this trial, they could have been  
5 restrained, at the initiative of an alert prosecution, from  
6 doing irreparable damage to the venue. I personally regret  
7 that this was not done.

8 Moreover, the key information which has made a  
9 fair trial impossible came from or through the Sheriff of  
10 Ada County, who has had official custody of this defendant,  
11 by Court order, since last November. The record discloses  
12 that the defendant, while in the Sheriff's custody, has been  
13 reduced to babbling incoherence by the administration of  
14 so-called "truth" drugs, with his attorney neither present  
15 nor consenting nor informed in advance, and that the results  
16 of these in-custody interrogations have found their way into  
17 the press. The State of Idaho has thus done by indirection  
18 precisely what it cannot do by direction. We are prepared to  
19 cope, Your Honor, with efforts by the State to get in-custody  
20 statements by this defendant into the record before a sworn  
21 jury.

22 We have no way of coping with the State's  
23 success in getting them in the presence of the people who will  
24 be jurors by releasing them to the press. These inexcusable  
25 procedures are the fault and responsibility of the State and



1       its agents.

2               What now is to be done? I have declined to suggest  
3       an alternative venue for this trial, because I don't know  
4       where one could be found. Both the printed and the  
5       electronic news media have pervasive distribution throughout  
6       this state. If venue is transferred to a corner of Idaho so  
7       remote and ill-informed that Thomas Creech is not already  
8       tagged, because of information let loose by the State of  
9       Idaho, as a self-confessed, multi-state murderer, how long will  
10      that condition endure? Is it conceivable that a jury could  
11      be impaneled and sequestered before the reason for the transfer  
12      of venue is generally known?

13              We will cross that fence when we come to it. If  
14      it should prove that this botched case cannot now be  
15      prosecuted without profound vibration of the defendant's  
16      rights to a speedy, public, fair and impartial trial I will  
17      regret it, but I believe that in the event that is what will  
18      prove to be the case.

19              I thank the Court.

20              THE COURT: Mr. Remaklus?

21              MR. REMAKLUS: Mr. Hower, Your Honor, I've listened to  
22      the eloquent and fluent statements of defense counsel. I've  
23      heard him impune the honesty of the jurors in Valley County.

24              As a public servant for 27 years I'm used to  
25      having my own integrity impuned so I'll make no comments with



1 reference to that.

2 I think we must examine the statement of the  
3 Defense Counsel, look beyond the eloquence and the flow of  
4 words and examine their content and we have here, Your Honor,  
5 a very impassioned plea on behalf of a man who is accused of  
6 first degree murder in this county. The basis of the argument  
7 appears to be this: That, if a man can do enough things, or  
8 if he can commit a single crime in a jurisdiction that shows  
9 that it is so shocking to the conscience of a state or a  
10 county, then that individual is entitled, in the final  
11 analysis, to be free.

12 Now, I don't think, Your Honor, that the founding  
13 fathers and the drafting of the Constitution of the United  
14 States and drafting of the Constitution of the State of  
15 Idaho had in mind and I believe that we are going to have to  
16 reduce it back to the rule of law and the rule of reason.

17 Now, as pointed out in the Dowd case upon which  
18 Counsel has relied so heavily, that because of the news media  
19 and the intelligence of our population and access to information  
20 that some information may be divulged to almost anyone anywhere.  
21 Now, we are not going and we are never going to find, in all  
22 cases, a venue where everyone examined for jury duty, much  
23 less everyone selected for jury duty, is going to have no  
24 knowledge of this case.

25 The very fact that this case is going to be

1 transferred, or very possibly, most likely to be transferred to  
2 another jurisdiction is, in itself -- it wouldn't follow the  
3 case to that first jurisdiction because that information is  
4 going to be there before Defense Counsel or Your Honor and I  
5 leave the courtroom. So, I think Your Honor is faced, or  
6 possibly the defendant is faced, with the proposition that under  
7 our system of justice that we are going to do the best we can  
8 and I suspect that what is implicit in our Constitutional  
9 provisions and the protection of the rule of law is that a man  
10 have a fair trial. I believe in the system, I work with it  
11 each day. But, a man is not going to be permitted, under our  
12 system, to work himself into such a position that because of  
13 the atrocity that he has perpetrated that that will be his  
14 protection and as Defense Counsel says, perhaps we'll cross  
15 that bridge when we come to it.

16 But, I would like to be a little bit more specific.  
17 I have, by the very fact of examining the large number of  
18 jurors in this case, by the very fact of conducting the  
19 examination of jurors individually in order to put them more at  
20 ease to enable Counsel and the Court to inquire more fully.  
21 This is certainly a demonstration of the concern of the Court  
22 and Counsel for the State and Counsel for the defendant to  
23 select jurors who would be fair and impartial.

24 Your Honor, we have put -- each juror was subject  
25 to interrogation, not only by Counsel but by the Court in order

1 to select 12 fair-minded people. Now, the process was slow and  
2 tedious and we came up with 12 citizens who, in my opinion, have  
3 passed this test and we did this -- we did this slowly and  
4 deliberately and, in the words of the Defense Counsel, I was  
5 satisfied with the jury when I had five pre-emptory challenges  
6 left. But, I have to exercise all of my pre-emptories solely  
7 because I'm going to make a motion for change of venue and  
8 protect the record, I have to do this.

9 Now, I would not mention that that is not of record,  
10 my comments that were not of record were injected into this and  
11 I cannot resist the temptation to inject a comment or two of  
12 my own.

13 As to -- we are in the position of interviewing  
14 some 80 to 90 people in order to select 12 jurors and two  
15 alternates and in our endeavor to select a fair jury we had to  
16 examine a large number of people and if Your Honor will pardon  
17 the expression, we were damned if we asked the questions, we  
18 were damned if we didn't ask the questions. So, we asked the  
19 questions.

20 We examined each juror fully and completely and I'm  
21 sure they responded honestly. They were under oath, Defense  
22 Counsel asked what the oath meant, "Is there a sanction higher  
23 than the rule of man if, for violation of the oath" and you  
24 heard their responses, Your Honor.

25 I looked down this jury list, I look at the names

1 of these jurors and in a small county we know most of them and  
2 to have their integrity impuned in such a manner is -- I cannot  
3 let this go without some comments, Your Honor.

4 The use of the expression "the State is responsible";  
5 that must be a comfortable approach by Defense Counsel.

6 He can point to me or to the Sheriff of Valley  
7 County and there is no question, Your Honor, but what we are  
8 agents of the State. So, we are responsible, he is saying, for  
9 what took place in the Ada County Jail; that we are responsible  
10 for the actions of the Ada County Sheriff of this state.

11 Now, this, the State of Idaho or the State, as  
12 applied to the United States of America are certainly going to  
13 protect the rights of Thomas Creech and I suspect that we are  
14 going to go to extreme lengths and to extreme expense to do so  
15 and I suspect that one day, Your Honor, in some county the  
16 State of Idaho, or at least you and I, won't be present that  
17 this man will be tried and he will face ultimately the verdict  
18 of the people that he should face in this courtroom; that is  
19 those 12 jurors.

20 I cannot help but be somewhat practical in my  
21 remarks there in the -- in our quest for reasonableness. I'm  
22 sure if we have to consider dollars and cents as well as  
23 attitudes and philosophies of people. This is expensive. From  
24 the looks of it now the expense will be horrendous and I  
25 suppose that our little county, because we happen to be on

1 Highway 55 and in the central part of Idaho, are going to have  
2 to bear that expense. I'm sure that our people would grit  
3 their teeth and do it because this is the American way and we  
4 are going to give this man the protection of our laws and of  
5 our dollars, he's entitled to it.

6 Your Honor, remarks of Counsel during his argument  
7 prompt me to make many observations, but I do believe, and I  
8 sincerely believe, that we have a jury of 12 competent,  
9 responsible citizens who are able to arrive at a fair and  
10 impartial verdict and I'm sure the defendant at this point  
11 realizes that he is represented by able and competent counsel  
12 and that we should, Your Honor, at this point proceed with the  
13 speedy and public trial to which this defendant is entitled  
14 under our Constitutional provisions.

15 THE COURT: Mr. Hower?

16 MR. HOWER: I have no further argument, Your Honor.

17 THE COURT: Well, this is a very onerous decision to  
18 have to make. I think the considerations have been well  
19 presented by both counsel and I feel that all of the  
20 considerations they have made are pertinent in the things I  
21 have to take into consideration. Mr. Hower expressed it and  
22 I'm sure Mr. Remaklus did the same thing, spent many hours after  
23 our evening recess studying the matter. For Counsel's benefit,  
24 I would indicate, to some extent, the Court's study of the  
25 matter.

1 I did take with me last night from the law library  
2 a recent ALR note, in 33 ALR 3rd on this specific subject, the  
3 annotation states the case of State versus Cody, the  
4 annotation begins on Page 17, Pretrial Publicity in Criminal  
5 Cases, Grounds for Change of Venue.

6 It covers some 200 pages of cases dealing with this  
7 problem. It deals with -- categorizes the cases as to seriousness  
8 of the crimes involved and, of course, it has a section of  
9 murder charges. That is treated separately.

10 My conclusions in reading these cases, and many  
11 of them, and the only notations that at this point in the trial  
12 where many prospective jurors have been examined as to the  
13 specific problem of pretrial publicity and that specific  
14 question; that the information given by those prospective  
15 jurors becomes most pertinent in deciding whether the venue  
16 should be changed and that the -- even more detailed evaluation  
17 of the prospective jurors that have been finally selected as  
18 trial jurors been examined as to their state of mind and state  
19 of knowledge that's been drawn from this pretrial publicity.

20 So, I've taken the time to do that. I've taken  
21 the time, both this morning and to have the Court Reporter get  
22 out his notes and go over the voir dire examination of each  
23 of the 12 jurors who have been selected to be seated in this  
24 case as a trial juror, to confirm my own notes that -- I took  
25 extensive notes during the examination.

1 I find that after all of the cases have been  
2 examined on this point that a great multitude of cases,  
3 probably still the one that comes closest to the actual facts  
4 we're dealing with in this case, is the United States Supreme  
5 Court Decision of Irwin versus Dowd with some additional  
6 enlightenment and elaboration in the famous Shepherd case. I  
7 don't need to give counsel those citations because I think they  
8 are well aware of them.

9 The Shepherd case isn't particularly important as  
10 far as the analogous facts, but some of the law set out in that  
11 case is important because that case does point out, as a matter  
12 of law, that it isn't particularly significant whether  
13 particular jurors have been challenged or not. If you end up  
14 with jurors on the jury panel that have been affected by  
15 pretrial publicity, particularly dealing with matters that  
16 would not be admissible on trial, that it isn't significant  
17 whether those jurors were challenged or not. That is  
18 sufficient reason to find that a fair trial could not result.

19 Irwin versus Dowd is analogous in its facts as well  
20 as the law that's involved because that does involve a case  
21 where the pretrial publicity dealt with other murders that  
22 the defendant is allegedly connected with. In that case there  
23 had been one change of venue granted. The petitioner initially  
24 sought for a change of venue that was granted but it was  
25 granted to an adjoining county. The case was then tried in



1 that county and an appeal to the United States Supreme Court  
2 and the United States Supreme Court reversed the conviction  
3 on the grounds that the defendant had been denied due process  
4 of law because of the adverse publicity dealing with matters  
5 that would not have been admissible on trial and couldn't have  
6 properly been brought to the attention of the jury.

7 It's a very practical decision because it recognizes  
8 some of the things that Mr. Remaklus has pointed out here.  
9 Justice Clark wrote the opinion and he points out that with  
10 our system of mass news media it's impossible to find jurors  
11 that are totally ignorant of the facts and issues involved.  
12 In fact, if you found jurors of that category you probably  
13 wouldn't want them on the jury anyway.

14 So, he says this: "It does not require, however,  
15 that the jury be totally ignorant of the fact and issues  
16 involved in these days of swift, wide-spread and diverse  
17 methods of communication. An important case can be expected  
18 to arose the interest of the public in a vicinity and scarcely  
19 any of those best qualified to serve as jurors will not have  
20 formed some impression or opinion as to the merits of the case.  
21 This is particularly true in criminal cases.

22 "To hold that the mere existence of any preconceived  
23 notion as to the guilt or innocence of the accused without  
24 more is sufficient to rebut the presumption of the prospective  
25 jurors' impartiality would be to establish an impossible



1 standard; but so you expect that jurors will have read about  
2 the charge and perhaps the allegations of facts surrounding  
3 the particular crime that the defendant is charged with but  
4 the area that creates problems is where you start talking  
5 about the defendant's past record or other alleged crimes that  
6 are not connected with the crime of which he's charged and  
7 those matters are widely circulated and widely publicized and  
8 come to the attention of the jury."

9 That was the type of issue that was being dealt  
10 with in Irwin versus Dowd and, so, Justice Clark went on to  
11 point out that "The adoption of such a rule, however, cannot  
12 foreclose inquiry as to whether, in a given case, the  
13 application of that rule works a deprivation of the  
14 prisoner's life or liberty without due process. The test  
15 is whether the nature and statements of the opinion formed  
16 are such as in law necessarily raises the presumption of  
17 partiality."

18 Now, he points out in that opinion that in that  
19 case there was extensive examination of the prospective  
20 jurors as to the pretrial publicity. He points out that even  
21 through examination by the trial judge that each juror  
22 indicated that notwithstanding his opinion, he could render  
23 an impartial verdict. But, Justice Clark then says "But as  
24 Chief Justice Hughes observed, 'Impartiality is not a  
25 technical concession, it is a state of mind for the

1       ascertainment of truth. The Constitution lays down no  
2       particular tests.'

3               "Here the pattern of deep and bitter prejudice  
4       shown to be present throughout the community was clearly  
5       reflected in the sum total of the voir dire examination of  
6       a majority of the jurors finally placed in the jury box.  
7       Eight out of the 12 thought petitioner was guilty. With such  
8       an opinion permeating their minds, it would be difficult to  
9       say that each could exclude this preconception of guilt from  
10      his deliberations. The influence that lurks in an opinion  
11      once formed is so persistent that it unconsciously fights  
12      detachment from the mental processes of the average man.

13             "Where one's life is at stake and accounting for  
14      the frailties of human nature, we can only say that in the  
15      light of the circumstances here the finding of impartiality  
16      does not meet Constitutional standards. Two-thirds of the  
17      jurors had an opinion that petitioner was guilty and were  
18      familiar with the material facts and circumstances involved,  
19      including the fact that other murders were attributed to him,  
20      some going so far as to say that it would take evidence to  
21      overcome their belief. One said that he 'could not give the  
22      defendant the benefit of the doubt that he is innocent.'  
23      Another stated that he had a 'somewhat' certain fixed opinion  
24      as to petitioner's guilt. No doubt each juror was sincere  
25      when he said that he would be fair and impartial to petitioner,

1 but the psychological impact requiring such a declaration  
2 before one's fellows is often its father. Where so many, so  
3 many times, admitted prejudice, such a statement of  
4 impartiality can be given little weight."

5 Well, in any case, that conviction was reversed  
6 for those reasons and I've come to the conclusion, after  
7 serious consideration of the law and the examination of the  
8 prospective jurors here, that if this case were tried and a  
9 conviction were had that this case would be reversed on appeal  
10 because of what the record shows at this time from the voir  
11 dire examination of the jurors.

12 We have, on the present panel, one juror who  
13 stated, and did not retract that statement, that that juror  
14 didn't think that he or she could judge the case fairly.

15 We have another juror that had very strong  
16 impressions that the defendant had committed crimes in other  
17 states that's on the panel.

18 Three additional jurors were not sure, but they  
19 thought they could set aside the knowledge and information  
20 they had about other crimes and the information about bodies  
21 in other states.

22 Ten of the 12 admitted that they had read about  
23 the other crimes and stories about bodies in other states.

24 Now, I'm personally convinced from the extended  
25 examination that there are very outstanding jurors on this

1 panel and conscientious jurors that -- I intend nothing that  
2 I say or any ruling that I make to reflect on their integrity  
3 because I think their very integrity and very honesty has  
4 placed us in the dilemma that we're now in. If those jurors  
5 hadn't been as honest as they were and as forthright as they  
6 were we wouldn't have the dilemma; we would simply have 12  
7 jurors sitting here that would say they hadn't heard anything  
8 about the case and had completely open minds. But, we simply  
9 don't have that.

10 I wouldn't be concerned if we had 12 jurors here,  
11 every one of whom had heard facts about this case, even facts  
12 that were admissible in evidence that were very damaging to  
13 the defendant. The thing that makes this so prejudicial and  
14 so difficult to believe the jurors could really remove this  
15 from their minds are the matters, that under no circumstances,  
16 could be admitted in this trial and come before that jury  
17 properly because these are matters that those jurors have read  
18 that would not be admissible in this trial, under any  
19 circumstances, as admissible evidence. For that reason I'm  
20 going to grant the Motion for Change of Venue.

21 I want to make this clear to you, Mr. Creech, in  
22 viewing this and I want it understood for the record and I'll  
23 give you a chance to say anything you want before we  
24 foreclose this issue. I'll hear anything you have to say on  
25 the matter.

1                   Inevitably the granting of your motion here that's  
2                   been made on your behalf will result in additional delay,  
3                   maybe considerable delays, you understand that?

4                   MR. CREECH: Yes, sir.

5                   THE COURT: And I'm not asking you to waive any rights  
6                   but you understand that that will be the result?

7                   MR. CREECH: Yes, sir.

8                   THE COURT: You are willing to accept that?

9                   MR. CREECH: Yes, sir. Can I say something?

10                  I'd like to clarify something just for the record  
11                  of the Court and on my defense counsel's part and Prosecutor's,  
12                  both.

13                  It was mentioned that part of the press problems  
14                  were because of the Ada County Sheriff, Chuck Palmer, and I'd  
15                  like to state that that's not true.

16                  THE COURT: All right, I'll accept your statement for  
17                  the record.

18                  Well, I'm going to remand the defendant to the  
19                  custody of the Valley County Sheriff at this point and I'm  
20                  going to continue the case for further proceedings. I don't  
21                  have my trial calendar before me but I'll have to find an  
22                  acceptable date for counsel and myself where we can consider  
23                  further proceedings, as far as I would like to have proposals  
24                  from Counsel as to procedurally how the new venue should be  
25                  picked and any proposals they have in that regard. When I

1 have my trial calendar available I'll get in touch with Counsel  
2 and you can arrange that date for further proceedings to proceed  
3 with the formal change of venue and also discuss further trial  
4 setting on this case.

5 MR. REMAKLUS: I have a point I would like to bring up  
6 at this time, Your Honor.

7 At the beginning of the trial I had asked to have  
8 seated at counsel table with me as an assistant, Lynn Thomas  
9 of the Attorney General's office and I think, under the statutes  
10 of the State of Idaho and under our Constitutional provision  
11 that the Attorney General has authority, even without leave of  
12 the Court, to participate in a criminal trial. In this case I  
13 specifically asked the Attorney General of the State of Idaho to  
14 have Lynn Thomas aid and assist me in the preparation of this  
15 case and this permission was granted by Your Honor by a signed  
16 order; the approval of the Attorney General was endorsed on that  
17 by the signature of Mr. Kidwell himself and upon objection of  
18 the defendant, this privilege was denied.

19 I think the major basis for this, that there was no  
20 notice. Well, certainly defense counsel has had notice at this  
21 time and I do now formally move the Court for leave to have the  
22 aid and assistance of Lynn Thomas, Deputy Attorney General of  
23 the State of Idaho in any further trials of this cause.

24 THE COURT: Well, you are right, Mr. Remaklus, the reason  
25 for the Court's limitation in that order was because notice

1 hadn't been given to Mr. Hower and it came by way of surprise to  
2 him, formal action should have been taken. But, I'll take that  
3 matter up along with other preliminary matters we have pending  
4 before us.

5 MR. REMAKLUS: I would think, Your Honor, if I may  
6 continue; that if this is to be a thorn in the side of the  
7 Public Defender and that if he is going to move this Court for  
8 an order for assistance on the defense, that he should at this  
9 time do so. Thank you.

10 THE COURT: Well, I think both of those matters can be  
11 taken up at the first continued date we have for preliminary  
12 motion, additional preliminary motions.

13 I'm going to have the Bailiff bring the jury in at  
14 this time.

15 (Whereupon the jury entered the courtroom.)

16 THE COURT: Ladies and gentlemen of the prospective trial  
17 jury in this case, it's with considerable dismay that I have to  
18 tell you this after all the time you spent here and sitting  
19 during the selection of the jury and spent during this  
20 preliminary process; that last evening, after the recess had  
21 been taken as far as you were concerned, the defendant did move  
22 to change the venue of this trial to another county on the  
23 grounds of the pretrial publicity and, particularly, the matters  
24 that had been developed over the two days in questioning the  
25 prospective jury members as to their acquaintance and familiarity



1 with this pretrial publicity and that matter was further argued  
2 this morning. After Counsel had been given a chance to do  
3 research on this question and Court had and I had also had the  
4 Reporter go over your answers to questions that were asked during  
5 the voir dire examination and as to your qualifications to sit  
6 as jurors. And after a review of all those matters I have been  
7 forced to come to the conclusion that because of the extent and  
8 timing of this pretrial publicity and the nature of it,  
9 particularly in bringing matters to light and to the knowledge  
10 of almost the entire panel that was examined, matters that would  
11 not be admissible in this trial and could not be admitted under  
12 any circumstances to the knowledge of most of you, ladies and  
13 gentlemen, and all of the other -- I say a great majority of  
14 the jurors during this jury selection process.

15 I've already addressed the ruling on the motion  
16 out of your presence and I repeat this for your benefit. This  
17 doesn't reflect at all on your honesty and integrity. In fact,  
18 it's brought about because of your honesty and integrity. I  
19 put it that way, it would have been easy for you to just simply  
20 say "I haven't heard anything about the case and don't know  
21 anything about it and could be a fair and impartial juror" and  
22 let it go at that. We wouldn't have a problem here.

23 But, you were honest enough and frank enough to  
24 answer the questions honestly and forthrightly and, frankly,  
25 that's what creates the problem. I'm convinced that even if we



1     tried this case and went through all the time and expense of  
2     the trial that it would be reversed on appeal; either by our  
3     own Idaho Supreme Court or United States Supreme Court because  
4     of what's been brought out here in the questioning of the  
5     extent of the knowledge of the prospective jurors and allegations  
6     of other crimes and bodies in other states, matters which could  
7     not properly be a part of this trial in a sense of under the  
8     law at all.

9             We examined each of you out of the presence of the  
10    others and individually, frankly, to try to protect the record  
11    in this matter and protect you so that if some of you had read  
12    more than others the ones that hadn't read it wouldn't get the  
13    knowledge of those who had read more extensively. We did that  
14    deliberately but I can tell you now that among your number is a  
15    juror who simply said that he, or she, doesn't think she could  
16    fairly judge the defendant. At least ten of you indicated that  
17    you were familiar and had read about these other crimes, or  
18    alleged bodies in other states and crimes in other states.  
19    Another of your number has stated that he had a strong impression  
20    that the defendant had committed crimes in other states.

21            Now, these were all honest answers, they were  
22    forthright answers and, as far as I'm concerned, I've tried a  
23    lot of jury trials in my days and I have not seen, in my  
24    experience, jurors that I felt were more, as far as general  
25    qualifications and quality, a higher quality jurors than we've

1 had to pick from in this case.

2 I've been impressed by your integrity, I've been  
3 impressed by your ability and, simply, generally, just your  
4 high quality. What I've done here does not reflect in the  
5 least on that. I know most of you, even though you had this  
6 knowledge, felt that even though some of you said you just  
7 didn't know for sure, I think about three of you said you  
8 weren't sure, you thought you could set aside this other  
9 information that improperly couldn't be brought before the trial,  
10 but you weren't sure.

11 Others of you felt fairly sure you could. I'm just  
12 going to simply read one statement from one of our United States  
13 Supreme Court Decisions that seems to be fairly close to this  
14 case because I think you are entitled to, after what you've  
15 gone through here, to know a little bit about why I made the  
16 ruling I did.

17 This was a case that was decided by the United  
18 States Supreme Court under somewhat similar factual circumstances.  
19 It involved a defendant who had been -- allegedly committed  
20 six other murders and these matters were widely publicized, and  
21 there was lots of publicity about it.

22 In that case they went clear through the trial and  
23 he was found guilty. But, on the appeal the United States  
24 Supreme Court reversed the conviction and this is some of the  
25 summary of the reasons the United States Supreme Court reversed

1 that conviction. They looked at this voir dire examination that  
2 you've gone through in that case just like I've done in this  
3 case and they said, "Eight out of the 12 thought that  
4 petitioner was guilty" of these crimes, and they say, even  
5 though they were very conscious and in saying they could set  
6 that aside the Court said, "With such an opinion permeating  
7 their minds, it would be difficult to say that each could  
8 exclude this preconception of guilt from his deliberations. The  
9 influence that lurks in an opinion once formed is so persistent  
10 that it unconsciously fights detachment from the mental process  
11 of the average man."

12 Now, many of you struggled with some of the  
13 questions you were asked and knew these things, you really  
14 struggled when you were asked, "Could you remove this from  
15 your mind and really decide this case strictly on the evidence  
16 that was admitted here"?

17 The Supreme Court recognizes that sometimes we  
18 don't even know ourselves whether we can really do that because,  
19 as they say, "the influence that lurks in an opinion once formed  
20 is so persistent that it unconsciously fights detachment from  
21 the mental processes of the average man."

22 And they simply say, "Where one's life is at stake  
23 and accounting for the frailties of human nature, we can only  
24 say that in the light of the circumstances here the finding of  
25 impartiality does not meet Constitutional standards. Two-thirds

1 of the jurors had an opinion that petitioner was guilty and were  
2 familiar with the material facts and circumstances involved,  
3 including the fact that other murders were attributed to him,  
4 some going so far as to say that it would take evidence to  
5 overcome their belief."

6 Now, we've had statement after statement that we've  
7 gone through all these 70-odd jurors, almost with that, those  
8 same statements, almost word for word, and it's unfortunate  
9 that we come to this conclusion so late, but we don't know this  
10 until you've all been questioned, you see. This is where we  
11 find out, after we've gone through 70 jurors and asked questions  
12 and hear them say things like that that's when we can't make  
13 a decision until that's done.

14 So, I'm sorry you've been put to the inconvenience.  
15 I hope you feel that your time hasn't been entirely wasted, you  
16 have served a function in bringing it to this point where,  
17 sometime, it had to be brought to this point to have this  
18 decision made and you played a part in bringing it to that  
19 point and we appreciate your doing that.

20 I personally thank you and I'm sure Counsel do for  
21 the time you've spent here and long hours you've sat over in  
22 the American Legion Hall and I'm sorry that -- I'm not sure you  
23 are sorry, I think maybe a great many of you are, probably,  
24 really in your heart relieved. But, I'm sorry you've gone  
25 through the inconvenience of reaching that you've had to reach

1 this point.

2 We do thank you and you may be excused and discharged  
3 at this time.

4 (Whereupon the jury left the courtroom and  
5 proceedings concluded.)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25